

General Information Regarding Board-Ordered Discipline (Probation) and the Alternative-to-Discipline (HPSP) Process:

The Oregon State Board of Nursing (OSBN) is charged with assuring public safety through the regulation of nursing practice. The term “nurse” and “nursing practice” is intended, for the purposes of the information contained in this document, to encompass the practice of Registered Nurses, Licensed Practical Nurses, Advanced Practice Nurses, Certified Nursing Assistants, and Certified Medication Aides.

The American Nurses Association (ANA) estimates that six to eight percent of nurses use alcohol or drugs to the extent sufficient to impair professional performance and could pose a risk to the public. When such a risk is reported to the OSBN and an investigation is completed, the Board (consisting of nine Governor-appointed individuals charged with the enforcement of the Nurse Practice Act (NPA)) may decide to:

- a. Dismiss the case if no violation of the NPA has been found.
- b. Discipline the license of the nurse. This is usually assigned to a category of discipline known as “Probation.” This requires the nurse to fulfill the specifications of the probation order in order to maintain their license. This discipline is a public document and is posted on the OSBN website for the life of the license.
- c. Allow the nurse to enter the alternative-to-discipline program (ATD) in Oregon, known as the Health Professionals’ Services Program (HPSP). In Oregon, the HPSP program is implemented by a third-party vendor and managed by the Addictions and Mental Health Services Division (AMH). This is not considered discipline and, if the nurse successfully completes the program, it will not be a public document. Currently, the ATD program is only available to Advanced Practice Nurses, RN and LPN license holders.

Participation in the ATD is confidential with the exception of essential personnel who “need to know” in order to implement the workplace monitoring plan. The licensee should be aware that co-workers may need to know about HPSP participation if they are to function as workplace monitors. For self-referred participation in the ATD, the Board will not be made aware of participation in the program unless there is an issue of non-compliance.

The decision to allow a nurse to enter the HPSP as an alternative to ordering discipline is determined based on several factors uncovered during the investigation of the complaint against the nurse. Issues such as diversion of drugs intended for patients, cooperation during the investigation process, the information derived from any type of substance abuse evaluation, etc. In either discipline or the ATD program, there will be extensive involvement by the OSBN, the requirement to comply with treatment recommendations, drug testing, abstinence from any mind altering or intoxicating drugs, and monitored practice for a period of no less than 24 months.

HPSP and Probation may also be used for nurses who are impaired due to mental health issues. Below is a synopsis of the requirements of the discipline and alternative to discipline programs:

Requirement	Discipline (Probation)	ATD (Known in Oregon as the HPSP program)
Length of Time	Varies but generally 24 months	48 months Mental Health Only: 24 months
Discipline appears on License	Yes, for the life of the license	No, unless licensee fails program, then the Board may impose discipline.
Drug Testing	Minimum 12 times a year	Minimum 36 times a year, Min. 24 year two Min. 18 Year three
Monitored Practice	Length of time determined by Board order.	Must have 24 months of monitored practice
Cost	Dependent upon treatment program and number of drug tests required. Average cost of UA test is \$40 each, frequency varies between 12-36 tests a year. All costs are borne by the licensee.	Varies, dependent upon treatment program and number of drug tests required. Average cost of UAs is \$60-\$125. Frequency varies between 18-36. All costs are borne by the licensee. Generally, this program is more expensive than probation.
Who administers the program	OSBN through the probation monitoring staff	The third party vendor administered by AMH.
Number of times per week the licensee must call into the program to determine drug-testing dates.	5 times a week to an automated line that will indicate when the next drug test will be (M-F, except holidays)	6 times a week to an automated line that will indicate when the next drug test will be (M-S, except holidays)
Workplace Monitor Reports	Once a quarter	Once a month
Workplace Restrictions	Usually, determined by the Board Order and influenced by the independent third party evaluator	Usually, determined by the independent third party evaluator.

Questions and Answers

Q: What is monitored practice?

A: A period during which a nurse's practice is monitored at her/his worksite. This occurs regardless of whether the nurse is on probation or a participant in HPSP. When the nurse is considered safe to return to practice, an agreement is reached between the nurse's employer and either the OSBN or HPSP that assures that the applicable requirements are met. This includes the nurse's access to controlled substances, the type of environment in which the nurse may practice, and assurance that the nurse's practice is being monitored by an individual who is of the same or higher level of license during the time she/he is providing patient care. The worksite monitor must complete reports to be sent to the OSBN or the HPSP reporting the adherence of the nurse with the requirements of the program. Once monitored practice begins, the nurse must obtain permission from the OSBN/HPSP to apply for a different position with either the same employer or a different employer.

If the nurse is not employed at the time they are determined to be safe to return to practice, the requirement for monitored practice remains unchanged. The OSBN may allow the nurse an extension of probation or allow the HPSP to extend monitoring when the nurse obtains employment in order to comply with the timeframe for monitored practice.

Q: I have a suspicion that a fellow nurse is having an impairment issue, but has never shown signs of impairment at work. Do I need to report the nurse to the OSBN?

A: The OSBN is charged with assuring the safety of the public. If you note behavior on the part of the nurse that could be a risk to the safety of the public, either at work or not, you should report your concerns to the OSBN. It is the Board's responsibility to review the situation and take action if necessary.

Q: I work in an Emergency Department and a patient came in via EMS due to an overdose. I know this patient is a nurse who works in our hospital. Do I need to report this to the OSBN?

A: When a nurse establishes a nurse-patient relationship with another nurse, HIPAA rules come into play. HIPAA generally does not allow disclosures of protected health and mental health information. HIPAA is a federal law and federal laws supersede any state mandated reporting requirements to the OSBN. However, there is an exception—if the situation presents an imminent and serious harm to the individual or the public, the nurse may report to the OSBN without permission of the patient. Example of an imminent and significant harm to the public would be that the nurse who was brought in as an overdose is ready for discharge, but not totally free of the effects of the overdose, and tells you they are going to work after they leave the ED. For more information regarding this and other questions regarding HIPAA and reporting exceptions, please access the [Sentinel article written by Shannon O'Fallon, Senior Assistant Attorney General, Oregon Department of Justice in December 2010](#), available on the OSBN website under "Publications."

Q: Do I have a duty to report impairment occurring in the workplace?

A: Yes. According to the Nurse Practice Act (OAR 851-045-0090(6)(j)), impairment shall always be reported to the Board. Regardless of, or in addition to, policies your employer may have in place, you have a duty to report any suspected incidents of impairment at work to the Board. You do not have to substantiate your suspicion first—that is the Board's responsibility. However, all licensees are required to report potential risks to client safety, and being impaired at work clearly falls in that category.

Q: If I terminate someone for chemical dependency or a mental health issue, do I have to report the termination to the OSBN?

A: Yes. According to the Nurse Practice Act (OAR 851-045-0090(6)(e)), dismissal from employment due to unsafe practice or conduct derogatory to the standards of nursing shall always be reported to the Board. Conduct derogatory includes impaired function due to psychological, mental, or substance use disorders. (OAR 851-045-0060 (6)).

Q: What is the difference between self-referred and Board referred to the HPSP program?

A: Self-referral is when the nurse voluntarily contacts the HPSP program to report their impairment. Board referred is when, after a complaint investigation, the Board determines that the nurse could be successful in an alternative to discipline program.

Q: Under what conditions can a nurse self-refer to the Health Professionals' Services Program (HPSP)?

A: If a nurse recognizes they have a substance use problem, they may refer themselves to the HPSP if they choose. The nurse should not refer himself or herself to HPSP if they know or can reasonably expect that their impairment will be reported to the Board by someone else, such as their employer. Once a licensee has been reported to the Board for impairment at work or any other substance/mental health issues, they are ineligible to self-refer to the HPSP. Self-referred licensees are known only to the HPSP staff; the Board is not informed of the enrollment. As with all participants, if a licensee who is a self-referral does not comply with any of the terms of the program, she/he will be reported to the Board by HPSP staff. The Board may allow the licensee to remain in HPSP or it may decide to discipline the license.

Q: Does self-referral grant immunity from Board Discipline?

A: No. If a licensee is in HPSP and is reported to the Board for either impairment or another issue, the Board will open an investigation and determine if any disciplinary sanctions need to occur. This could include the licensee being removed from HPSP and entered into probation.

Q: Why should a nurse self-refer to HPSP?

A: There has been some evidence that monitored practice, along with support and adherence to the treatment program, can increase the chances of recovery.

Q: What will it cost me to self-refer to HPSP?

A: Costs for the HPSP self-referral is comparable to the Board-referral costs. The difference in a Board referral and a self-referral is that the self-referral requires:

- a. An annual fingerprint based criminal background check. The current cost (subject to change) is \$20 to obtain the fingerprints and \$38 for the prints to be reviewed by the Oregon State Police.
- b. A safe practice evaluation: \$1500

For both Board-referral and self-referrals:

- a. Approximate cost for toxicology tests is \$60 to \$125. The expected cost of testing for the first year of the program is anywhere from \$2,000 to \$2,400 depending on the type and frequency of testing. The standard number of required tests for the first year is 36 tests per year. Missed tests will require additional testing. In the second year of the program, the testing frequency (if eligible for test reduction based upon results of Year One) is 24 with a minimum of 18 in Year One and Four.
- b. If the licensee has not had an evaluation regarding their substance abuse or mental issue, an evaluation that includes a fitness-for-duty determination will be required and may cost \$300-\$1,500. If an evaluation was previously obtained by the nurse, paid by her/his health insurance, and did not contain a fitness-for-duty determination, a fitness-for-duty determination will be

required that may cost the nurse out of pocket the same amount as the initial evaluation. For this reason, it's best to ensure that any evaluation includes a fitness-for-duty determination.

Regarding Board referrals to HPSP (which come at the conclusion of a Board disciplinary investigation), the evaluation would have been completed as part of the Board's investigation to determine appropriateness for HPSP. Since this is included in the investigation, there is no requirement for a new Criminal Background Check or a safe practice evaluation cost.

Q: What will it cost if I am on Probation?

- A. The cost can vary, depending on the treatment program selected by the participant and the frequency of testing required.
- a. Toxicology testing is required in cases of substance impairment. The Board may consider the toxicology tests done during the licensee's treatment program as acceptable. The Board testing is less costly per test due to the current State of Oregon contract with the testing vendor. The approximate cost of testing is \$40 per test, and the frequency ranges from 12 to 36 a year. The probation monitor assigned to the case will discuss current pricing of the tests at the beginning of the probationary period.
 - b. During the disciplinary investigation, a background check will be performed and the licensee will be required to get an evaluation that includes treatment recommendations and will determine if he/she is safe to return to practice. Since this is included in the investigation, there is no requirement for a new Criminal Background Check or safe practice determination cost.
 - c. The nurse's obligation to provide an evaluation that includes a fitness-for-duty determination is the same for probation as HPSP and, as with Board-referral, the evaluation will occur during the investigation period.

Q: What if I cannot afford any of these programs?

- A: **For HPSP:** If you cannot afford this program, then you may be subject to Board discipline in the form of probation. You can be terminated from the program for failure to pay (either self-referral or Board referred), at which time you will be referred back to the Board by HPSP for further action.

For Probation: Failure to comply with a Board order (the order states that you are to comply with all testing and treatment requirements spelled out in the Board order) could result in further disciplinary action, including revocation or voluntary surrender of your license. There is the possibility that for revocation or surrender you could apply for reinstatement after three years. Reinstatement of your license is not guaranteed and the decision will be entirely up to the Board. The probation monitor assigned to you by the Board would discuss these options with you.

Q: Will I know if my nurse has self-reported to HPSP?

- A: Any licensee who self-refers is required to enter into monitored practice. In order to arrange for monitored practice the employer must be notified and willing to provide a workplace monitor and submit regular reports to HPSP. The licensee will be required to sign releases that allow conversation and exchange of information between the HPSP and the employer. The licensee must also sign a release that if there is substantial non-compliance with the HPSP program, the program will notify the Board. The only difference between self referred and Board referred is if the licensee successfully completes the HPSP program, the Board will have no knowledge of their enrollment in HPSP.

Q: How do I know if my nurse can return to work?

- A: Once a nurse has fully enrolled in the Health Professionals' Services Program or placed on Probation, they will be allowed to return to work. For a nurse placed on probation, the probation staff does not need a release to speak with the employer. For HPSP, the nurse will have signed a release allowing

HPSP to contact the nurse's employer to establish the criteria for worksite supervision of the nurse. The employer will be required to sign a worksite agreement with HPSP or Probation. If you have not yet been contacted by HPSP or Probation, the nurse may not return to work. If the nurse has signed in Interim Consent Order that voluntarily removes them from practice pending a further Order by the Board, the nurse will not be allowed to return to work until they are fully enrolled at which time the ICO will be ended.

Q: What are the signs and symptoms of impairment?

A: It is important to know the individual's normal baseline function to determine if there is a change in behavior or practice pattern. Although not exhaustive, the following can be viewed as indicating the possibility of impairment:

- Workplace:
 - Known to volunteer to give pain medications for another nurse's patients.
 - Unusual interest in pain control medication.
 - Unexplained Frequent absences from the workplace or numerous trips to the bathroom during a shift.
 - Requests to work evenings/nights/weekends or times when supervision is not as present.
 - Inaccurate opioid counts/volunteering to do counts.
 - Frequent breakage or wasting of opioids/asking others to sign wastage of drugs without actual witness to wastage ("trust me")
 - Changing routes of medication administration.
 - Numerous corrections/deletions of medication administration records.
 - Patients reporting ineffective pain medication on specific shifts despite documentation of medication being given
 - Variations in pattern of opioid discrepancies associated with a specific nurse.
 - Pattern of more frequent opioid administration than others with the same types of patient.
 - Ordering medications from the pharmacy before refill date.
 - Ordering medications for patients who have been discharged or dies.
 - Multiple late entries for medication administration.
- Physical Signs:
 - Shakiness
 - Hand tremors
 - Slurred Speech
 - Constricted pupils/dilated pupils
 - Diaphoresis
 - Unsteady Gait
 - Runny Nose
- Behavioral Signs:
 - Multiple complaints of appearance
 - Mood lability
 - Interpersonal problems with patients, staff, family
 - Incomplete thoughts or statements.
 - Changes in handwriting
 - Changes in the ability to accept feedback or provide feedback.
 - Changes in job performance over time with no apparent cause.
 - Changes in interactions with co-workers.
 - Falling asleep at work.

If none of the symptoms above are apparent and a substance use issue is still suspected, documentation is essential to determine future actions. Documentation of trends of absenteeism and tardiness, incident reports, written complaints, chart reviews, etc. Over a period of time a pattern may emerge that could result in a discussion with Human Resources to determine if a meeting with the nurse is warranted. If your organization is represented by a Collective Bargaining agreement, the agreement should be reviewed for any provision regarding impairment.

Q. What should I do if I think one of my nurses is impaired?

A. Review your organizational policy regarding impairment in the workplace. Most organizations have such a document. Your Human Resources department should be a resource to you. However, if the impairment is noted while the nurse has a patient care assignment of any kind, you must remove the individual from his or her assignment and arrange for another nurse to take over the assignment. Leaving a nurse suspected of impairment in a patient care assignment is a violation of the Nurse Practice Act regardless of organizational policy. The nurse should be tested according to your organizational policy and there should be a mechanism to assure that the nurse has a safe way home. Documentation of the signs of suspected impairment should be completed as soon as possible after the suspected impairment was noted.

If the possibility of impairment was brought to your attention for other reasons than during a work shift (such as peers reports of behavior, etc) the discussion with the nurse should be done prior to the next work shift. Once you have suspicion that a nurse is impaired they should not be given a patient care assignment (including being assigned as a charge nurse with or without a patient care assignment) until the issue has been discussed and a plan of action has been formulated.

Q. I have learned that one of my staff who was on FMLA was in a drug rehabilitation program. Do I need to report this to the Board?

A. No, not if there is no witnessed impairment or other issues that could indicate that the nurse would be a risk to patient or public safety. Of course, returning from a FMLA leave would require a release to work. Within that release to work, there would need to be an indication that the nurse may return to full duty without restrictions. If there were restrictions, it would be advisable for you to refer the nurse to the HPSP program as a self-referral. This would require you to accept the nurse into a monitored practice situation. It would benefit the nurse for you to be supportive of their initiative to seek care before patient safety or their ability to perform according to standards is compromised.

Q. My organization has a policy that I must report any suspected impairment to the Risk Management Department and then they will decide if the incident is to be reported to the Board. Am I covered for not reporting by my organization's policy?

A. No, as a license holder your responsibility to the NPA supersedes your accountability to your employer. The license awarded by the state authorizes you to be a nurse; violation of the requirements spelled out in the Nurse Practice Act could result in Board action against your license, which could include revocation. Since impairment is considered a subject of mandatory reporting, you are obligated by state law to report. Organizational departments such as Risk Management or Human Resources cannot compel you to violate the nurse practice act. However, since the Board has no jurisdiction over organizations that employ nurses, if the nurse is terminated for reporting to the Board, the nurse may need to seek recourse through unlawful termination avenues.

Q. What happens once I report a nurse to the Board?

A. Per Oregon Revised Statute (ORS) 678.126, the Board is required to investigate all complaints concerning the conduct of licensees. The complaint will be triaged to assure that the Board has jurisdiction over the complaint. The Board has no authority over healthcare organizations nor the

behavior of a licensee outside the scope of the Nurse Practice Act (for example, a complaint that a neighbor, who happens to be a nurse, plays their music too loudly at night). A complaint of impairment is a Mandatory Report per OAR 851-045-0090 (j) and will be investigated.

The case will be assigned to an investigator on the Board staff. This Board, through the investigator, has the authority to subpoena personnel records, medication administration records, patient records, automated dispensing cabinet records, or any other information the investigator feels is required to do a thorough and complete investigation. During this time, the investigator may request that the nurse obtain a chemical dependency or mental health evaluation. To be considered for entry into HPSP the licensee must have an evaluation and a diagnosis. If the nurse refuses to obtain this evaluation, the investigator can request the Board to order an evaluation. Cooperation with Board orders and consent to an evaluation is implied when the licensee applies for and is granted a license.

If, during the course of the investigation, the investigator uncovers information that indicates the nurse may pose a risk to the public if she/he continues to practice, the investigator may request that the nurse sign an Interim Consent Order (ICO). This is a voluntary removal from practice. While the nurse cannot be compelled to sign an ICO, doing so would indicate to the Board that the nurse is cooperating with the investigation. If the nurse refuses to sign an ICO, then the investigator may request that the Executive Director call an emergency meeting of the Board to order an emergency suspension of the license. There is a very high bar for this to occur and does not happen frequently.

The investigation may take weeks or months, dependent upon investigator caseload, how quickly documents are obtained, and the information presented during the investigation. If you are the complainant, the investigator will call you to discuss your concerns. If you do not hear from the investigator within two weeks of your complaint, please call the Board of Nursing at 971-673-0685 and ask to speak with the Investigations Manager.

Once the investigator determines there is enough information to substantiate a violation of the NPA, or if there is no evidence that the NPA has been violated, a report will be presented to the Board for their review and disposition. There may be a lag time of weeks to a few months between completion of the investigation and a board decision. Organizational policy will need to be consulted with regard to the nurse's ability to maintain employment if an ICO has not been signed or an Emergency Suspension has not been ordered. Until the Board has made a determination on the case and, absent an ICO or Emergency Suspension, the nurse will maintain an unencumbered nursing license in the state of Oregon.

Once the Board reviews the report, they can vote to dismiss the case, reprimand the license, place the nurse on probation, refer the nurse to HPSP, impose a civil penalty, suspend the license, or revoke the license. Any discipline imposed on the license can be appealed by the nurse.

Q. What is an Interim Consent Order (ICO)?

A. A document signed by the nurse to remove themselves voluntarily from practice pending the outcome of an investigation. The ICO is not a surrender of the license or a revocation of a license. The license is intact until a disposition of the case has been made by the Board. The ICO is used to remove a nurse from practice due to a concern for public safety. However, because only the Board can act on a license, the investigator does not have the authority to remove a nurse from practice; the nurse must consent to do so under an ICO. Signing an ICO indicates to the Board that the nurse cooperated during an investigation, and may be a factor during the Board's deliberations once the investigatory report is presented. Once an ICO is signed, the nurse may not practice until the Board "vacates" the Order when case disposition has been made.

Q. As an employer, what if I do not agree with returning the nurse to work?

A. The Board does not regulate employment, only licensure. The employer may or may not continue to employ the nurse regardless of Board decision or a diagnosis by an evaluator. However, there may be American with Disability (ADA) issues associated with not allowing a nurse to continue employment if an evaluation by a qualified evaluator indicates that the licensee may fall into a protected class with a diagnosis of impairment due to substance use or mental disorder. Your Human Resources department should be consulted.

Q. The nurse was sent for an evaluation as a requirement for returning to work, but now the Board wants another evaluation? Why? What happens if the nurse's insurance carrier will not pay for a second evaluation?

A. Per OAR 851-070-0060, in order to be approved by the Board as an independent third-party evaluator an evaluator must:

- Be licensed as required by the jurisdiction in which the evaluator works.
- Have a minimum of a Master's degree in a mental health discipline.
- Provide evidence of assessments at the licensure level of the licensee being evaluated.
- Provide evidence of additional education and experience as shown by one of the following:
 - Department of Transportation Substance Abuse Professional Qualification.
 - Certified Alcohol and Drug Counselor II or III.
 - Board Certified in Addiction Medicine by either ASAM or American Board of Psychiatry and Neurology.

In addition, the evaluation should contain a diagnosis, treatment recommendations to include ASAM level of care, and any work restrictions the evaluator feels would be in the best interest of public safety and still provide the licensee the ability to recover (such as no access to opioids, etc.)

The Board will not accept an evaluator as independent in a particular case if, in the Board's judgment, the evaluator's judgment is likely to be influenced by a personal or professional relationship with the licensee.

If the above criteria are not met, then the Board staff may request another evaluation. If the insurance carrier who paid for the original evaluation will not pay for the additional evaluation, then the licensee must pay out of pocket in order for the investigation to conclude. If the licensee fails to obtain an evaluation when requested to do so by the Board, it will be deemed a failure to cooperate and may result in discipline of the license.

If a facility has a policy that requires a nurse to obtain an evaluation prior to returning to work, it would be of benefit to all if the above criteria be met by the initial evaluation. When the criteria are met, the Board may use that evaluation without the nurse possibly bearing the expense of a second evaluation.

Q. I am on Probation (or in HPSP). I have been offered a new position in another hospital; may I accept the position?

A. The licensee may not accept another position with a new employer or transfer to another unit/department within the same organization without Board approval. This is applicable to both probation and HPSP. In either program, there must be an agreement that monitored practice will continue with the new department or new employer, which must be in place prior to any approval for transfer or new employment.

Q. I have been asked to be the workplace monitor for a nurse on my unit. What if something happens to a patient during this monitoring period? Is my license at risk?

A. The workplace monitor should be someone in a position to observe the work of the licensee and assure that the requirements of the return to work agreement are being met. It would not be appropriate for a manager or supervisor who does not have regular direct observation of the licensee's daily work and work throughout the shift to act in the position of a workplace monitor. It is required, however, that the manager submits the monitoring reports to either the HPSP or the probation program. This will require the manager, the workplace monitor, and the licensee to have regular discussions and feedback sessions in order to provide appropriate reports. The requirement of the workplace monitor is to determine if the licensee is meeting the criteria of the monitoring agreement.

Example: The workplace monitor would have accountability under their license if they allowed the licensee to be at work while impaired or allowed the licensee access to controlled substances if their work restrictions did not allow access.

Example: The workplace monitor would not be accountable under their license if the licensee failed to rescue a deteriorating patient and failure is not related to their impairment.

The licensee in either the HPSP or probation programs is always responsible to their own license for the performance of nursing practice. The monitor is responsible only to observe the adherence to the monitoring agreement and report any violation of that agreement to the supervisor/manager.

Q. Part of my restriction is that I cannot float or work overtime until given permission by the program to do so. What do I do if the workplace is short staffed, and I am asked to float or work overtime?

A. The licensee must abide by the work restrictions until the Board determines that the restrictions may be changed. If the licensee accepts a float or overtime assignment without the release of the restriction, the licensee could be removed from the HPSP program and face Board discipline. It would be prudent for the licensee and the manager to determine how the knowledge of these restrictions can be made known to those who would be asking the licensee to float or work overtime (charge nurses, shift supervisors, etc). While it is not required to disclose any specifics of the workplace restrictions, discussion between the manager and the licensee beforehand about how these situations are to be communicated and handled will avoid confusion when these situations present.

Q. How does the American with Disabilities Act (ADA) protect the impaired nurse?

A. All specific questions regarding the ADA should be discussed with your Human Resources Department. In general, the ADA does not specifically recognize impairment as a disability. A disability must either substantially limit a major life activity currently, was substantially limiting in the past, or is regarded as substantially limiting. This is applicable to current condition or one in remission. However, a disability does not release a nurse from the responsibility to comply with Nurse Practice Act regulations or employer rules prohibiting active impairment during patient care assignment or in the workplace. In addition, the "direct threat" exception to disability accommodation applies to nurses if it is deemed that the nurse poses a threat to the safety and welfare of the patient, active impairment is not required to be present. The ADA provides four specific factors to consider when determining whether a disabled individual poses a direct threat:

1. The duration of the risk.
2. The nature and severity of potential harm.
3. The likelihood that the potential harm will occur.
4. The imminence of the potential harm.

The ADA continues to evolve and change. The answer to the question is based upon the information available during the formulation of the FAQ section. It is imperative that any HPSP issues be discussed with an HR professional.

Q. I have an applicant who has disclosed to me that they are in a monitoring program. Can I refuse to hire based on being in a monitoring program?

A. This would be a question addressed to your HR department. If being in the monitoring program is the only reason an otherwise qualified candidate was not awarded a position, there may be some legal implications. The requirement is a fair and equitable consideration for qualified candidates. Does your organization have a policy that directs how long someone must show compliance with a monitoring program prior to hire? Are all applicants included and excluded equally? These are questions within an organization to address. The Board of Nursing has no authority to compel an employer to hire anyone in either the HPSP or Probation program.

Q. Can I ask an applicant if they are in a monitoring program as part of my routine interview?

A. This would be a question for your HR department. The Board of Nursing has no authority over the hiring practices of an organization. A licensee is required to advise potential employers at the time a job offer is made of their participation in either the HPSP or Probation Program. In addition, Board approval is required prior to the licensee accepting any new employment.