Fitness to Practice: Sexual Misconduct

The Board, in keeping with its mission to protect the public health, safety and welfare, closely reviews situations where individuals engage in sexual misconduct towards patients or in the workplace, individuals who have been convicted of sexual misconduct, or whose sexual misconduct outside of the workplace may be viewed as having a nexus to nursing. This applies to applicants and current licensees/certificate holders.

In addition to the overall considerations regarding the safety of the public, the following assumptions are the basis for Board decisions regarding sexual misconduct:

1. 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.
2. There are appropriate boundaries in the nurse/nursing assistant-patient relationship that nurses and nursing assistants must clearly understand and be trusted not to cross.
3. Sexual misconduct towards patients or in the workplace raises serious questions regarding the individual’s ability to provide safe, competent care to vulnerable patients.
4. Sexual misconduct that 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 or perform any of the duties within the scope of practice for nurses and authorized duties for nursing assistants.

The Board does not rely solely on conviction of a crime to deny, suspend or revoke a license or certificate. However, evidence of the conduct that is the basis for a conviction may be of concern. Crimes of sexual misconduct that involve abuse of a minor or a vulnerable person or taking advantage of another person have a high risk for denial of an initial application for licensure or certification or revocation is a current license or certificate. While in most criminal offenses the length of time between the offense and the application may be a consideration by the Board, this is generally not the case in crimes of sexual misconduct. 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 all speak to concern that time may not truly define a change in behavior.

There are also crimes that involve conduct between consenting adults. While these crimes may be serious in nature they do not rise to the same level as crimes against a minor or vulnerable person. In most cases, the Board will request the licensee/certificate-holder/applicant to obtain an evaluation by a healthcare professional who has expertise in evaluating sex offenders.

Sexual misconduct towards patients or coworkers is never acceptable. Conduct such as rape, sex disguised as treatment (such as unnecessary or prolonged pelvic/breast exams or touching intimate body parts when touch is not necessary for care) and “sneaky sex” (surreptitious touch, voyeurism or exposing the patient’s body when not necessary) are generally grounds for denial or revocation of licensure and certification. In addition, the Board will review cases where sexual misconduct occurs in view or hearing of a patient and may affect the patient’s care or feelings of safety, the Board may take action to include denial of application or revocation.
Other sexual misconduct such as sexual harassment of a patient, verbal interaction of a sexual nature or a romantic-like relationship with a patient are unacceptable and will be reviewed individually by the Board for denial of application or sanctions for current license/certificate holders.

Consensual sex between a licensee and a patient whose relationship with the patient is that of a mental health therapist is serious and not acceptable. 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. In general, the Board would consider denial of application or revocation of licensure.

Adopted: 4-10-97
Revised: 9-98, 11-98, 6-99, 3-16, 8-18
Next Review: 3-21