The American Association of Nurse Attorneys (“TAANA”) has issued a position paper advocating the imposition of (1) a statute of limitations on state boards of nursing disciplinary actions and (2) limitations on the ability of a nursing board to take reciprocal disciplinary action against a licensee based on actions by another state nursing board. TAANA argues, in favor of the latter point, that reciprocal action is “tantamount to double jeopardy.” This response evaluates the legal sufficiency of the position paper’s argument. As shown below, TAANA misapplies the concepts of statutes of limitations and double jeopardy to state board of nursing disciplinary actions and fundamentally disregards the public safety purpose of state regulation of professional, including nursing, licenses.

A. Statute of Limitations

Statutes of limitations are designed for use in civil and criminal litigation to prevent unreasonable delay and the prosecution of stale claims for the purpose of preserving the settled expectations in the enjoyment and enforcement of private legal rights. However, it is well-established that, in the absence of specific statutory enactment, statutes of limitations are inapplicable to administrative license revocation and disciplinary proceedings taken in the public interest.¹ The rationale is that states regulate professions in their sovereign capacity and for the public safety, not to adjudicate private interests. State regulatory agencies take disciplinary action in the furtherance of protecting the public by insuring that only properly qualified and ethical

¹ Noralyn O. Harlow, Annotation, Applicability of Statute of Limitations or Doctrine of Latches to Proceeding to Revoke or Suspend License to Practice Medicine, 51 A.L.R. 4th 1147, 1151 (1987); Krahenbuhl v. Wis. Dentistry Examining Bd., 2004 WI App. 147, 275 Wis. 2d 626, 685 N.W. 2d 591 (2004); Saha v. Iowa Bd. of Medical Examiners, 537 N.W. 2d 674, 1995 Iowa Sup. LEXIS 175 (1995).
individuals practice nursing. This public safety objective is prospective and continuing and the staleness of any charge, in and of itself, does not render the charge irrelevant to the ongoing public safety concern. Accordingly, the Courts have consistently held that statutes of limitations, not expressly directed at administrative proceedings, do not apply to administrative actions, such as licensure disciplinary actions, taken in the public interest. Whether complaints based on incidents that occurred many years ago are relevant to the ability of a nurse to provide safe and effective care, now and in the future, is an important consideration. However, this consideration can be adequately addressed through the due process afforded by the state Administrative Procedure Act safeguards applicable to such disciplinary proceedings. The TAANA paper ignores the settled law regarding the application of statute of limitations to licensure disciplinary actions, as well as, the underlying public safety rationale behind the case law. Consequently, its analysis and policy recommendations are critically undermined. Individual states may conclude that the application of a statute of limitations is appropriate, but there is no legal doctrine or precedent that mandates this as a general proposition.

B. **Retained Jurisdiction**

TAANA’s paper also argue that “reciprocal”: action against a nurse’s license in State A on the basis of an action previously taken by another statue nursing board against the nurse’s license in State B constitutes impermissible double jeopardy for the nurse. TAANA’s position misapprehends the notion of double jeopardy and, again, ignores the public safety role of professional licensing regulation.

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2 In addition, the Courts are split as to whether the doctrine of latches applies to administrative disciplinary actions, not because of the mere passage of time, but where unreasonable prejudice to the licensee, unrelated to the merits of the charge, would result from undue delay. See, *Harlow*, 51 A.L.R. 4th at §§ 2(a), 4.5.
The concept of double jeopardy is rooted in the common law and the Fifth Amendment to the United States Constitution. It is, however, a feature of criminal law and has no applicability to civil litigation or to administrative disciplinary actions, except potentially in very limited types of civil penalty litigation not applicable here.\textsuperscript{3} Double jeopardy prevents an accused person from being tried again for the same offense after acquittal or prior conviction. The evil sought to be avoided by prohibiting double jeopardy is double trial and double conviction, not necessarily double punishment. In particular, the Courts have consistently applied, even in criminal litigation, the dual-sovereignty doctrine to allow state and federal governments to prosecute someone for the same offense even after a prior prosecution in another jurisdiction.\textsuperscript{4} Again, the rationale is that each state, as a sovereign, has the right to take actions necessary to protect the safety of its residents. In the case of reciprocal actions, a state board of nursing is well within its legitimate authority to take action against a licensee on the basis of another state’s licensure disciplinary action that implicates the individual’s ongoing ability and likelihood to practice professionally and safely.

TAANA’s compliant about a nursing board’s retained jurisdictional authority to take disciplinary action even after a licensee leaves the state and is practicing in another state is also not well founded. Indeed, to allow a nurse to evade disciplinary action merely by fleeing the jurisdiction would critically undermine state nursing boards’ ability to protect the public. This is not to say that there are no instances where state boards of nursing have taken reciprocal action


where public safety was not clearly implicated and it is undisputed that better coordination between state boards of nursing in taking reciprocal action may improve regulatory fairness and efficiency.

However, TAANA’s recommendations that statute of limitations be imposed on licensure disciplinary actions and that nursing boards’ retained jurisdiction and “reciprocal” actions be curtailed, if not eliminated, are unsupported by well-settled legal principles and would serve to undermine nursing boards’ ability to fulfill their regulatory purpose.