

Effective Complaint Triage Processes

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Objectives

- Discuss Effective Complaint Receipt & Triage Practices
- Consider Legal Aspects of Triage:
 - Opening, Processing, and Closing Complaints



COMMITMENT ONGOING REGULATORY EXCELLENCE

CORE

Subcommittee comprised of 10 states identified as high performing in area of discipline: Arizona, Arkansas, Iowa, Kansas, Oklahoma, Ohio, Nevada, Texas, Minnesota, Missouri

Validate promising practices in discipline

Create an adoption plan for effective practices nursing boards can utilize to improve performance in overall discipline practices

Why Is This Work Important?

- **Public protection** is served by conducting complaint investigations in a systematic, timely & unbiased manner
- Investigative evidence obtained **guides decision-making** & appropriate case resolutions
- **Limited resources:** essential to use efficiently & effectively
- Investigations & discipline are the **largest expenditure** for most if not all nursing boards



Investigations & Discipline Costs

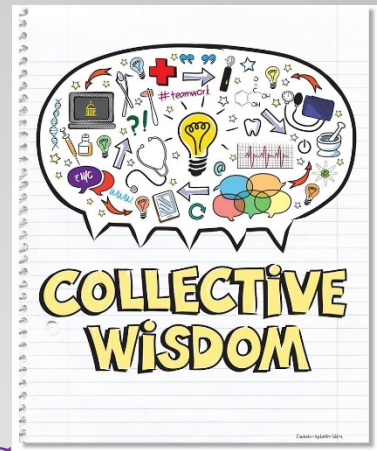
Nursing is the largest regulated population resulting in high volume of complaints and investigations

Twenty boards of nursing provided discipline budget information totaling: **\$57,503,222**

- Average spent on investigations/board: **\$2,875,161**



Collective WISDOM OF Investigative EXPERTS



- Guidelines & thresholds for opening cases enables focus on high risk/harm cases
- Timely complaint resolution & right outcomes enhances public protection
- Appropriate & defensible investigative outcomes depend upon identifying & collecting relevant information & evidence



Complaint Triage & Case Assignment Effective Practices



Standardize online complaint form & instructions

- Respondent identification, contact information, employment information & status
- Guided narrative: who, what, when, where, how, why
- Patient identifying information
- Witness(s) identification & contact information
- Complainant contact information
- Ability to upload documents



Benefits of Standardized Complaint Intake Process & Form

- Informs the complainant of information **needed**
- Promotes **consistent** reporting of information
- Facilitates ability to **timely assess risk/harm** & assign priority status
- **Simplifies** assignment of complaint to investigator with expertise



Complaint Triage & Case Assignment Effective Practices

2. Establish thresholds for opening/assigning complaint investigation



- Focus upon complaints representing potential **higher risk** to public safety
 - AZBN Policy: Criteria For Opening Complaints/Investigations
 - Three major areas: action in another jurisdiction; arrests/convictions; employment/practice related allegations

Complaint Triage & Case Assignment Effective Practices

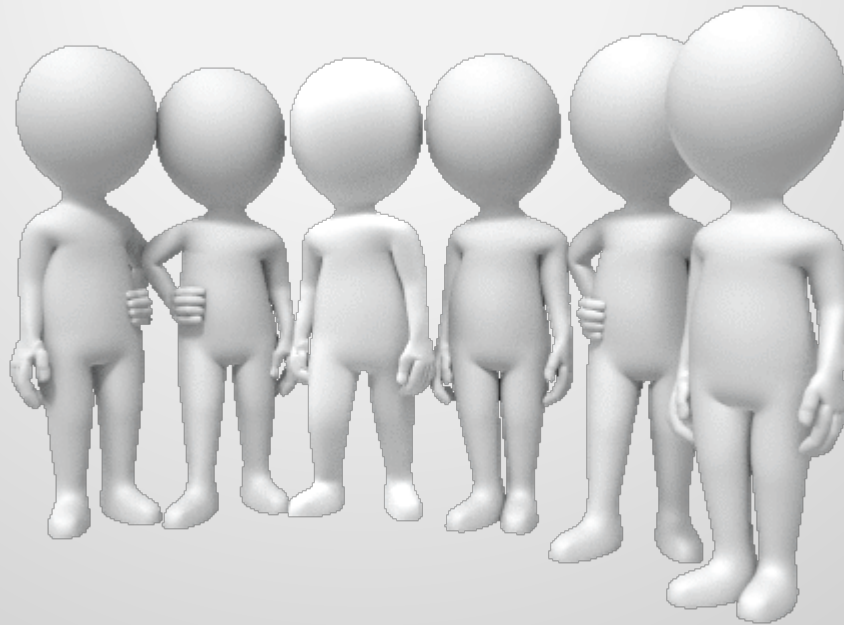


3. Establish clear guidelines & policies outlining the complaint intake decision-making process

Complaint Triage & Case Assignment Effective Practices



4. Designate primary person accountable for receipt, review & assignment of complaints



Complaint triage & case assignment effective practices



5. Assign case priority/risk level

- Based upon initial information
- Risk may change as new information received
- Delegated authority to investigator to modify risk level as new information is understood





Nature

Severity

Imminent

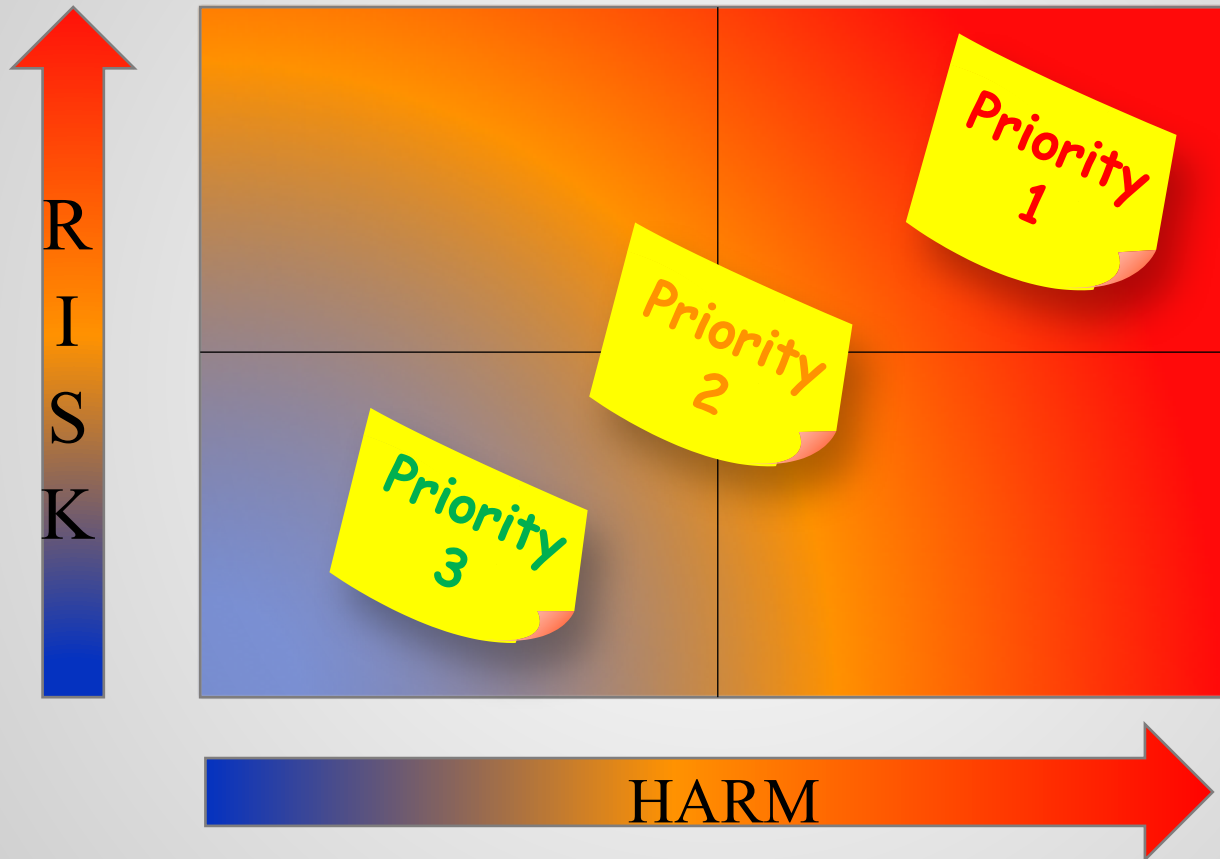
Prioritize Cases and Investigations

Consider the Nature & Severity of the Complaint



- **Priority 1 - High Risk /High Harm *Imminent Threat***
- **Priority 2 – Medium Risk/Medium Harm.** Potentially harmful to patient/public safety but is *not* a substantial danger or imminent threat
- **Priority 3 - Low Risk/Low Harm**

Risk/Harm



Imminent Danger to the Public

- **Priority 1 High Risk /High Harm** – Immediate investigation
- Significant physical **abuse** patient/family
- **Sexual** conduct involving a patient/family
- One or more reported incidents of **impairment on duty**
- Patient death or **significant harm** related to care or **lack of care**
- **Repeated practice deficits** with **high risk** for harm
- Criminal conduct with **significant injury/harm** to another
- **Adulteration** of drugs
- Active **severe** chemical, psychiatric, or cognitive **impairment**
- **Imposter** or practicing on suspended/revoked license

Priority
1

Medium Risk/Medium Harm

- Potentially harmful to patient/public safety but is **not** a substantial danger or imminent threat.
- Drug **diversion**/prescription **fraud/unauthorized** possession of CS
- **Smell of alcohol** without signs of impairment in cognition/judgment
- **Positive** “for cause” or pre-employment drug screen
- Alternative to discipline program **discharge**
- Physical **abuse**, **Sexual** misconduct, **Boundary** violations
- Recent or active **substance abuse**
- Failure to **assess or intervene** or medication/treatment **errors**
- Practicing beyond **scope**
- Current or recent **action in another state** resulting discipline
- **Conviction** of a criminal act
- **Theft** from a patient, their family, or place of employment



Low Risk/Low Harm

- **Priority 3 - Low Risk/Low Harm.** Isolated act with low risk for harm to the patient/public
- Documentation **errors**/med errors – no harm
- Verbal **abuse**
- Abandonment
- Fraud/deceit
- Practicing on a lapsed/expired license
- Sleeping on duty
- One time DUI **without** any additional indicators of significant substance abuse
- Breach of confidentiality



Additional effective triage practices

6. Assign investigator based upon expertise & capacity
 - Prepare notification to complainant & respondent
 - Prepare initial subpoenas & requests for information
7. Assign multiple complaints involving same licensee to same investigator
8. Assign complaints involving multiple licensees for same incident(s) to one investigator
 - Efficient as one person receives, reviews records, interviews witnesses, gathers evidence
 - Promotes continuity & appropriate resolutions

Effective triage practices

9. Standardized form to document complaint & triage activities

- Communicates triage activities & direction to investigator & others
- Improves ability to track information requested & received

10. Track all complaints

- Receipt to resolution
- By licensee/individual, not license number
- Investigative cycle timelines



Legal Aspects Of Complaint Triage

- Opening: Legal Authority to Investigate Complaints & Ultimately Discipline
- Processing: Delegated Authority to Make Triage Decisions and Guidelines
- Closing: Benefits and Risks of Early Complaint Closure



Part One: TO OPEN OR NOT TO OPEN

- **Legal Authority** to Investigate and Discipline
 - Practice Act
 - Nexus to Practice



Legal Authority To Open Investigation

- Practice Act

Authority to Investigate:

- Nurse Practice Act:

Arizona Revised Statutes § 32-1606(C):

- “receipt of information”



Legal Authority To Open Investigation

- Practice Act – Unprofessional Conduct
 - Actual harm vs. potential harm
 - AZ NPA defines “Unprofessional conduct”
 - “Is or might be harmful or dangerous”
 - “Deceives, defrauds or harms”
 - AZ Rules defines “Unprofessional Conduct”
Intentionally or negligently causing physical or emotional injury.



Legal Authority To Open Investigation

- Nexus to Practice

- If practice is not directly involved, can you still open a complaint?
- Is there a nexus requirement to regulated practice?



Nexus To Practice: *Winters & The Wild West*

Claude L. Winters - licensed teacher AZ Board of Education.

- Board disciplined: five separate incidents from October 1998 to April 2000.



Winters – Hot Arizona Summers



1. October 1998: **Disorderly conduct** charged, later dismissed.
2. May 1999: **Criminal damage and disorderly conduct with a deadly weapon.** Plead to unlawful discharge of a firearm, class 2 misdemeanor
3. August 1999: **Disorderly conduct.** Charge dismissed.

Winters – Hot Arizona Summers



4. August 1999: **Threatening an individual (former student).**
Prosecutor declined to prosecute.
5. April 2000: **Obstructing criminal investigation, aggravated harassment, interfering with a judicial proceeding, and threatening and intimidating.** Pled guilty to aggravated harassment, a class 1 misdemeanor.

Winters – Hot Arizona Summers

Winters v. Ariz. Bd. of Educ., 207 Ariz. 173, 83 P.3d 1114 (App. 2004):

- Court of Appeals affirmed revocation of a teaching certificate
 - Rejected: Teacher's argument that conduct did not affect operation of school or adversely affect the teacher-student relationship.
 - Found: Tendency to react with violence. Serious even though not at school.
 - Found: Numerous charges = good and sufficient cause for disciplinary action



Part Two: Processing Complaints Delegated Authority & Triage Policies

Delegated authority and established policies allow staff to make efficient, consistent decisions with Board guidelines



Delegated Authority

- How to structure delegation?
- A.R.S. § 32-1605.01(B): “The executive director or the executive director’s designee shall:
 - 5. Perform other duties as directed by the board



Guidelines And Policies

- Arizona Board of Nursing Policies:
- Criteria For Opening Complaints/Investigations
 - Detailed, specific, approved by the Board
 - Historic Board actions, evidence based



Part Three: Closing Complaints Early Benefits & Risks

- **Benefits of Early Closure:**
 - Efficient use of limited resources
 - Ability to focus on high risk/high harm cases, timely resolution
 - Improve public protection
 - Reducing risk to the agency by eliminating non-actionable or minor complaints early



Benefits: Need For Speed

Cornfeld v. State Board of Physicians

174 Md. App. 456, 921 A.2d 893, 2007 Md. App. LEXIS 69 (2007, Court of Special Appeals of Maryland)

- No sanction for delay in board investigation
- Physician: full and fair opportunity to be heard
- Statute required “expeditious” disposition of complaints within 18 months of receipt

Benefits: Need For Speed

Solomon v. Board of Physician Quality Assurance,

132 Md. App. 447, 752 A. 2d 1217, 2000 Md. App. LEXIX 101 (2000, Court of Special Appeals of Maryland)

- Board had authority to follow-up on complaints after closure
- Board could pursue investigation more than 18 months:
directory “time frame” not mandatory “time limitation.”

Benefits: Need For Speed

Cooper v. Illinois Dept. of Children and Family Svcs

234 Ill. App. 3d 474, 599 N.E. 2d 537, 1992 Ill. App. LEXIS 1416, 174 Ill Dec. 753
(1992, Appellate Court of Illinois)

- Child Care Act hearing requirement within 30 days “directory” not “mandatory”
- Department retained jurisdiction because purpose of Act: protect children
- Statute did not prohibit Department from acting if exceeding time frame

Risks of Closing Complaints

- Future need for old complaints to establish patterns of conduct
- Limitations on revisiting complaints later
- Liability to agency



A Bird In Hand



- **New Complaint**

- Witnesses and records available
- Memories fresh
- Standard process

- Evaluation based on risk level, guidelines/policies, resources whether to pursue

Patterns: Reopening Old Complaints

Old Complaints - Need to demonstrate patterns, repeated behavior, corroboration

Arizona Unprofessional Conduct Rule:

- A pattern of using or being under the influence of alcohol, drugs, or a similar substance . . .

Patterns: Reopening Old Complaints

Examples:

- 1) Old DUI dismissed upon initial application, but second DUI later - need to consider original DUI for “pattern”
- 2) Patient allegations: first complaint(s) – witness credibility; later similar allegations create need to revisit original complaints

Patterns: Reopening Old Complaints

Long v. Board of Registration of Real Estate Appraisers

2016 Mass. App. Unpub. LEXIS 513 (2016, Appeals Court of Massachusetts)

- Board disciplined licensee as repeat offender: failed to disclose DUI on both initial application and renewal applications
- Board argued discretion to impose sanction
- Court disagreed, found improper consideration of the unadjudicated earlier conduct



Risks Of Early Closure, Need To Revisit

- Res Judicata
 - Was complaint “adjudicated” when closed?
- Estoppel
 - How does agency convey closure of complaint?
 - Board decision or delegated to Board staff?
- Due Process
 - Prejudice and ability to proceed?



Statutes of Limitations

California - 3 year limit

Cal. Bus & Prof. code 4982.05,
2960.05, and 1311

New Mexico - no statute of limitation

17-303 NMRA

New Arizona statute – 4 years (exceptions)

ARS sec. 32-3224 (effective August
2017)



Risks - Liability To Agency

Harm alleged due to agency inaction:

State of California v. Superior Court of Sacramento

County, 150 Cal. App. 3d 848, 197 Cal. Rptr. 914, 1984 Cal. App. LEXIS 1496 (1984, Court of Appeal of California)

- Real Estate Commissioner: duty to investigate claims
- Failure to act after investigation - not proximate cause of damages
- Duty to act: discretionary
- Remedies: Private right of action? Immunity?



Closing

- Benefits of early closure of low risk cases
- Importance of guidelines to maintain consistency and fairness
- Consider state-specific laws
- Mitigate potential risks to agency



Questions?

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