Past Event: 2023 APRN Roundtable - Navigating Through the APRN License Discipline Process Video Transcript

Event
2023 APRN Roundtable

More info: https://www.ncsbn.org/past-event/2023-mym

Presenter
Lauren Papillion, JD, Chief Compliance Officer Louisiana State Board of Nursing

Welcome. Glad to have you on this voyage. I'm Lauren Papillion, and we are navigating through the APRN license discipline process. We are going to cover the board and its jurisdiction, the complaint and investigation process, discipline and alternatives to discipline.

The post-discipline process, and along the way and at the end we will have other examples and discussion. I don't want to go overboard with the navigational theme, but I do like the analogy of a ship, which is a tangible piece of property. You can own a vehicle to get around. You have a property right in your APRN license distinct from the RN license, and you should keep these licenses well maintained so you can keep smooth sailing through your advanced practice registered nursing.

If your license is like a ship, who is the captain of the ship? You, the licensee. The board issues the license and enforces the law, but it is the APRN's responsibility to know the law that applies to his or her license and to avoid the need for discipline. If you do become the target of an investigation, knowing the APRN license discipline process will help you either avoid or minimize discipline and if disciplined, to make the appropriate repair to your license so you can resume safe and competent practice.

When navigating license discipline, always consider the benefit of legal counsel. You may think of boards of nursing as scary creatures of the deep but boards are really just creatures of statute. What does that mean?

The state legislature passes an enabling statute or act that creates the board defining its membership, jurisdiction, powers, rulemaking authority, and other activities. Most everything the board does is limited to what is authorized in its practice act and in the board's own rules and regulations which are promulgated under that statutory authority.

Rulemaking authority is critical to the work of the board because much of the specifics of the disciplinary process is going to be in the rules and not the Practice Act itself. When it comes to navigating discipline, this can be a powerful tool for an APRN. If the board goes outside of its Practice

Act authority or any other legal authority that applies to the board, such as the Administrative Procedure Act or the Constitution.

This could potentially void or delay the agency's action or some other consequence to the agency. I've had many APRNs ask me why the board thinks it can do what it's doing, and I'm always prepared to point to the source of the board's authority.

Our enabling statute is like a map. We need to be able to find our authority somewhere on there. Boards generally want to be compliant if it's brought to the board's attention that we are off the map in an area outside our authority, the board will want to get back within its authority. For example, title protection is an issue that's come up recently in my jurisdiction.

Our statute does not provide title protection, so the board does not enforce this. Should the legislature amend the act to provide title protection, the board will start enforcing it. As the law changes, the board follows. Employment issues and business operations are often outside the jurisdiction of the board.

APRNs may own or operate businesses, including healthcare-related businesses, but complaints made against an APRN related to the ownership or operation of that business may or may not be within the board's jurisdiction, depending on the nature of the complaint and the conduct.

If the complaint of conduct is not related to nursing practice, the board may not be the proper authority to discipline. Even if the activities do appear to violate some other law or regulation, the board may need to close its complaint and refer the matter to another agency that has jurisdiction. Many jurisdictions like mine have a statement of purpose or legislative intent in their act.

This is so important to the work of the board. We know that practice standards evolve and the law and rules should be updated as needed. But agencies will have a certain amount of discretion in applying discipline. The Legislature's statement of intent helps the agency focus on applying that discretion consistently toward this defined public purpose.

For example, we received a complaint from an employer against an APRN for an alleged boundary violation, something the board takes very seriously. But here the complaint was primarily based on the APRN breaching an employment contract between the APRN and the employer, where the APRN agreed not to have a relationship with any current obviously, but also former patients and don't want to get into too many specifics.

But the definition of former patient was very broad and included a defined number of years after discharge. It is not the role of the board to enforce employment contracts. If the employer terminates the APRN based on breach of contract, that's a matter of employment law.

However, employer policies and procedures do often align with practice standards. So we do give these violations due consideration. But here the board looked to its own rule defining boundary violations, which did not specify a specific length of time.

The board, of course, considered the length of time since discharge, which was several years, but short of the number of years required by the contract, there was no indication of romantic involvement during treatment, and the APRN was not the primary treatment provider for this patient. Signing off on some charts, but no real substantive treatment and the patient did not appear to be negatively impacted in any way.

We did consider that the APRN had agreed to this term in a private employment contract, but legislative intent instructs the board to regulate in the public interest and ultimately there was not a sufficiently compelling public interest to discipline this specific conduct. Let's discuss the complaint and investigation process.

Most investigations began when the board receives a complaint. It is a passive process in the sense that the information needs to come to the board. Complaints come from all types of sources, patients, employers, health department, law enforcement, and oftentimes from the APRN, who may be required to self-report.

Complaints filed with my board must be in writing but may be anonymous. Form requirements vary by jurisdiction. All complaints go through a screening process. We look at the complaint and whether if we can prove the conduct, would it even be a nurse practice act violation?

And if we can prove it, is it sufficiently serious to warrant discipline? Many complaints are closed with an ending letter or an informal warning letter. If the board opens a formal investigation, the matter is assigned to an investigator and given a priority level, which is largely based on the risk of harm to the public.

Lower-priority investigations often have longer deadlines to close, but this may not be ideal for the APRN under investigation. I suggest working cooperatively with the assigned investigator to see if you can constructively help to get the investigator what he or she needs to complete the investigation.

During the formal investigation, the APRN has due process rights and also obligations to the board. The APRN has a right to notice of the alleged violation and to review the evidence at the appropriate time so the APRN can respond, and there may be an affirmative duty to provide a response to the board and to keep the board updated with a current address.

There may also be obligations on other licensee witnesses to cooperate with a board investigation. At the end of the investigation, the investigator will prepare a report of his or her findings.

This goes through more layers of review to decide whether to pursue discipline or close without discipline, either because the violation is not substantiated or the board has elected to issue an informal warning or letter of concern. After a certain amount of time, the ability to bring a claim or prosecution can be barred.

Criminal, civil, and administrative actions can all have time limits, or they can have no time limit at all. It depends on the jurisdiction. For instance, medical malpractice payouts often come to the board's attention years after the incident date, an APRNs will often take issue with how much time has passed since the incident and the board's investigation, but usually, a lot less time has passed since the board received notice of the incident and when it started its investigation.

And the board has a right to investigate potential Nurse Practice Act violations, including medical malpractice complaints. On when to disclose a reportable event, most APRNs report during the renewal process, but there can be a benefit to reporting early.

I recommend consulting an attorney to discuss the risks and benefits of when to report, but please don't fail to report that is never the right choice. Now, if the complaint has been substantiated, we move on to

discipline or alternatives to discipline. When there is discipline, the discipline will be described in a written, publicly available document forever attached to the license.

APRNs should look at every word in that document to make sure it is trimmed and tailored as best as the APRN can negotiate. The document will describe the factual findings, the level of discipline, and other sanctions and stipulations such as fines and practice restrictions. Discipline will be reported to nurses and that code and narrative description can also be a point of discussion with the board.

Discipline can be on the RN license or the APRN license or the board could agree to dispose of the matter with an informal warning or letter of concern, which is not discipline, but it is a record of the board and can be used in future board proceedings. If the board has an alternative to discipline program and if the APRN meets criteria, that can be an option also.

If the board staff and the APRN can negotiate a settlement agreement, that document will go to the board for ratification and there will be no right to appeal. Before signing any consent order or settlement agreement, the APRN may want to discuss the proposed discipline with his or her employer to know whether there will be any adverse employment outcomes.

The opportunity to make changes to the board order is before it is signed and becomes a contract with the board. After that, it's a matter between the APRN and his or her employer. If the parties can't agree, the matter will be set for administrative hearing.

The rules of evidence and the burden of proof will vary by jurisdiction. Know what those are. There will be a cost structure for the hearing, so know what you are fighting about before you get to hearing. An APRN may want to consider admitting to certain facts that are not in dispute and are not central to what the APRN is asking of the board.

Know also if your jurisdiction allows parties to present proposed orders to the board and if so, consider preparing one and presenting that to the board. After a hearing, an APRN will have a right of appeal, with or without the need to exhaust administrative remedies depending on the jurisdiction.

Administrative remedies can include asking the board itself to reconsider the decision it made. The Alternative to Discipline program is used when the APRN is in violation of the Nurse Practice Act and could be disciplined but is allowed into a non-disciplinary program providing monitoring structure and support for safe reentry into practice.

It is non-disciplinary as long as the APRN is compliant with the program requirements. Entry into alternative to discipline can include substance use disorders and also sometimes medical, mental, and physical disorders.

Many nurse practice act violations involve alcohol or drug-related conduct. So want to discuss those a little bit separately. These violations can be handled through discipline, alternatives to discipline, or even with a non-disciplinary warning letter. Many participants in the Alternative to Discipline program have substance use disorders.

The board looks at all levels of conduct on duty, off duty, and also pre-licensure activity and events that occurred during periods of lapsed licensure. Substance use disorder is something the board takes very seriously.

Host discipline. The best advice I can give is to be compliant and work with the case manager on any issues that arise in the post-discipline period. If both licenses are encumbered, the RN license and the APRN license with probation or other stipulations, those restrictions are likely to be removed in a progressive fashion.

Being removed from the RN license first and at intervals and after a period of compliance at each stage. At the end, the APRN can hope to have both licenses fully restored. Boards will often use outside evaluators to give recommendations.

Those evaluators must be approved by the board based on certain criteria set by the board, mostly to ensure the evaluators understand the demands and nuances of occupational licensure and nursing practice, and that these evaluators have education and training in substance use and addiction.

Common probation stipulations. Work restrictions are often seen with probated licenses. The APRN may be required to have an employer agreement and the employer may be submitting performance reports to the board.

There are often restrictions on handling controlled substances, restrictions on practice settings such as home health and hospice. Restrictions on time of practice, such as night shifts and overnight shifts. Restrictions on holding management roles such as charge nurse or supervising other nurses.

Direct supervision is another common requirement, and this is the biggest concern for APRNs we have found. We have at least 100, I'd say APRNs working in my jurisdiction with some kind of employment agreement in place for direct supervision.

We have found that any APRN who wants to work with the probated license is able to do so. But it is true that some APRNs may not be able to continue in their current position if that current position is unable to provide direct supervision.

Other common probation stipulations include drug and alcohol screening, continuing education requirements. As for the term of these stipulations, they can either be for a set period of time or they can be indefinite and the APRN must return to the board and request the removal of the restriction and show cause for why that restriction should be removed.

Scope of practice and prescriptive authority are two major areas where we see and discipline. In some states, prescriptive authority is included with APRN licensure, and in other states it must be applied for separately. Know also that prescriptive authority will include diagnosis and treatment.

It is not just writing medication prescriptions. I have two cases I would like to discuss highlighting the scope of practice concerns that the board deals with. In the first case, an APRN was reported to the board by DEA for being a top prescriber.

The APRN was prescribing narcotics at a high level above those of even some oncologists and was also prescribing ADHD medications to a large volume of patients, including patients under five years. In evaluating the case, the board looked at the APRN's specialty here, a family nurse practitioner.

The board looked at whether the APRN had any additional training or expertise in the areas. This APRN was very actively prescribing and that was not found to be the case. The board also looked at the

documentation this APRN was making and whether that documentation supported the decision-making for these patients and that was not found.

In fact, the documentation in the chart was very scant, very little, very little charting. In the second case, the APRN was reported anonymously to the board. And when investigated, the violations described by the anonymous complainant in the complaint were not substantiated.

However, during the investigation, it was discovered that the APRN had written a non-narcotic controlled substance for chronic pain. In our state, APRNs are prohibited from treating obesity or chronic pain or prescribing controlled substances for chronic pain, and that is regardless of the education and experience of the APRN.

This is something that in our state is defined in our rules. And so, that is another takeaway APRNs need to be aware of. So here in our state, APRNs are not permitted to prescribe controlled substances for chronic pain, and thus it was a violation by this APRN to have treated this patient with controlled substances for chronic pain.

Again, the board looked at the documentation for this APRN and all the charts were in fact very excellently documented, including the chart for this patient. So, in the first case, that's a higher degree of concern for the board.

It shows a systemic practice of this APRN and will likely result in a much higher level of discipline, likely probation at a minimum. The second case is a violation and is of concern to the board.

But this APRN will be much more successful in negotiating with the board on the issue of discipline. There are several mitigating factors that this APRN can bring to the board's attention, and something like probation may not be necessary for a nurse who has only been found to have deviated for one patient and something that their training and experience may support.

But the practice scope of practice and our state does not allow them to treat to their full practice authority. So again, be very cognizant of the rules of each state and whether scope of practice is limited, not just by education and training, but also by the specific rules and requirements of each practice jurisdiction.

We have reached the end of our voyage. I'll be available live to answer any questions you may have.