

# What Rights do Nurses Have When Appearing Before the Board of Nursing?

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The protections afforded a nurse licensee who has allegedly violated the nurse practice act or its rules and must answer to the state board of nursing are grounded in the act and rules themselves, as well as the state and United States Constitution. Because the board of nursing and the nurse practice act are created by a state's government (through its legislature), unique safeguards exist for any licensee, including a nurse licensee.

As you know, nursing licenses are granted after an individual succeeds in graduating from an approved nursing education program, passing the proper licensing exam (e.g., NCLEX), and fulfilling other requirements set by the state board of nursing. What you may not know that once granted, the license is considered "property" under the state and federal constitutions and therefore protected from unfounded removal from the person by the government. In this way, the license is a "right".

However, because the license is granted by the state and its board of nursing, it is a "right" that is not without limits. A nurse licensee must practice nursing within the bounds of the nurse practice act and its rules as well as within the ethical codes applicable to the profession. When this does not occur, the nurse licensee may be disciplined by the state board of nursing. In this way, then, the license to practice nursing is also a "privilege", which means one's nursing practice and personal conduct can be called into question if the act and rules or ethical codes are allegedly violated.

The government, and any of its entities, is powerful, particularly against an individual. In the enforcement of a nurse practice act, the state board of nursing must function in a fair and just manner when exercising its authority to discipline a license, which includes placing the licensee under probation, levying fines for a violation of the act or rules, suspending the nurse's license, and revoking the license, as examples.

The discipline of a nurse licensee must conform to the requirements of the state nurse practice act, its rules, and the board's own procedural requirements for discipline. For example, the board may be required to have a stenographer present during any formal hearing when it decides this approach is the one it wants to take with the allegations made against the nurse licensee. Likewise, the board may be required to utilize hearing officers that either work for the board or who do not work for the board but contract with it to hear board cases.

It is also important to note that during the investigative phase of a complaint against a nurse, the

board's investigators will delve into the allegations against the nurse, including interviewing former or current employers, obtaining statements from nurse colleagues, subpoenaing employment records and patient medical records. The investigators will also try to obtain a statement from the nurse licensee. It is important to note that the nurse licensee has a right not to speak to the investigative team. The only obligation the nurse licensee has when the board of nursing is involved is to meet with the board or be present at a formal hearing. (1)

Many states have an option for the nurse and the board to resolve a complaint brought against the nurse without recourse to a formal hearing. For example, the board may provide for the nurse licensee to meet with the board and try and resolve the matter by agreement. Such a meeting may be called a "settlement conference", an "informal conference" or a "disciplinary conference".

In either situation, there are specific rights that the nurse licensee has when the state board of nursing is considering taking some type of action against the nurse licensee. These rights are based on the Due Process clause of the 14th Amendment to the United States Constitution and include, but are not limited to:

- A right to clearly know the allegations against the nurse;
- A notice of the date, time and place of a hearing or other form of meeting with the board;
- The right to legal counsel (at the nurse's expense or through her professional liability insurance policy) or, at a minimum, the right to seek advice from a nurse attorney or attorney;
- The right to present one's own witnesses and documents (formal hearing) or the right to present statements/letters in support of the nurse in another form of meeting with the board;
- If involved in a formal hearing, the right to cross-examine the board's witnesses;
- Whether after a formal hearing or another type of meeting with the board, a right to a written decision/transcript if any action is taken against the nurse; and
- The right to have the decision of the board reviewed by a court. ("administrative review"). (2)

Many times nurses think that hiring an attorney, even when faced with a formal hearing, signifies their "guilt" concerning the allegations against them. Nothing could be further from the truth. In any situation where one is alleged to have done something, legal representation is essential in order to defend against those allegations. Not having legal representation is foolish at best.

Check your own nurse practice act and rules and identify what rights you have when you are faced with an allegation that you have violated the state nurse practice act and/or its rules. Also, remember that if your professional liability insurance policy covers professional disciplinary proceedings, your insurance company will strongly encourage you to retain an attorney, either through their own referral service or through representation by one of their attorneys on staff.

## **FOOTNOTES**

(1) LaTonia Denise Wright (2005), "Commentary : Bill Of Rights For Nurses In Licensure Matters", 10(3)

Journal of Nursing Law , 179.

(2) Nancy J. Brent (2011), "Protect Yourself: Know Your Nurse Practice Act". CE Module (CE 548).

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