

# What Types of Conduct do Boards of Nursing Consider as Unethical, Unprofessional or Illegal Conduct by Nurse Licensees?

written by Nancy Brent | December 1, 2013

## **Avoiding Liability Bulletin - December 2013**

As you know, state boards of nursing are empowered with the duty to administer and enforce the state nurse practice act and its rules. This duty is based on the board's overall duty to protect the public from unsafe and/or incompetent practitioners.

At first blush, you may think you know what a state board of nursing means by this phrase. Most of your guesses may be right. Examples include breaching nurse-patient confidentiality, theft of patient money, belongings or identity, and crossing nurse-patient professional boundaries. Some of these types of behaviors were discussed in an earlier bulletin that focused generally on what types of conduct a board of nursing could consider violations of the state act and/or rules.

The unethical, unprofessional or illegal conduct by a nurse licensee as basis for disciplining a nurse is expanding. No longer are the more "common" reasons you might think would violate this sanction are the only ones that are analyzed by a board when evaluating a nurse licensee's conduct.

For example, one of the more recent examples that you should be aware of is when a nurse is convicted of driving under the influence (DUI). You might think this is a stretch, since a DUI has nothing whatsoever to do with your practice as a nurse or an APN. The DUI did not take place while the nurse was on duty. However, in a recent California case (1), the California Board of Nursing and the California Appellate Court saw this conduct differently.

In upholding a nurse's discipline by the board of nursing for a conviction for "using alcohol in a dangerous way" and an "alcohol-related conviction"(language from the state nurse practice act and rules), the court held that there does not need to be a nexus between a licensee's fitness to practice nursing and conduct for which the licensee was convicted. The court continued that the duty of the board is to protect the public, and when a state legislature passes statutes and rules that indicate certain conduct is related to their professional qualifications, the board can take disciplinary action against the licensee.

Although the California Nurse Practice Act and rules had listed specific language for conviction of crimes, for alcohol -related convictions, and for using alcohol in a dangerous way, this decision opens the door for acts and rules to be amended to include such specific language. It also potentially allows

other boards of nursing to bring disciplinary actions against nurses for “unprofessional conduct” that may not be specifically listed but result in a conviction of a DUI, shoplifting, driving on a suspended license, as examples, or other situations that raise a question as to the professionalism and ethics of the nurse licensee.

So, what do you need to know about this case as it pertains to you and your licensure as a registered nurse or advanced practice nurse? Some points to consider include:

- Know your nurse practice act and rules and what both say about your conduct as a licensee and the obligations you must adhere to as a result of the license you possess;
- Pay attention to the specific language in both the act and rules that allows the board to take disciplinary action against you in a non- nursing practice issue;
- Remember to conduct yourself as a professional at all times, both while on duty and when not on duty;
- Carefully consider getting involved in any situation that may result in notoriety, an arrest, adverse publicity, or a conviction;
- Carefully consider what you post on any social media page or in an e-mail that might be considered “unprofessional” or “unethical”;
- Select your friends wisely and with care;
- Don’t drink and drive;
- Pay your state and federal income taxes and any student loans;
- Pay any child support for which you are responsible; and
- Monitor legislative changes to your state nurse practice act and/or rules.

## **FOOTNOTES**

1. Sulla v. Board of Registered Nursing, 205 Cal. App. 1195 (4th District).

**THIS BULLETIN IS FOR EDUCATIONAL PURPOSES ONLY AND IS NOT TO BE TAKEN AS SPECIFIC LEGAL OR OTHER ADVICE BY THE READER. IF LEGAL OR OTHER ADVICE IS NEEDED, THE READER IS ENCOURAGED TO SEEK ADVICE FROM A COMPETENT PROFESSIONAL.**