

CHAPTER 13

GROUND FOR DISCIPLINARY ACTION AGAINST A NURSE

I. INTRODUCTION

There are many possible grounds for which disciplinary action may be initiated against a nurse in Florida. It is important to be familiar with these so that you can avoid them.

You should review and be very familiar with all of the Florida laws and the Florida Board of Nursing's Rules that appear in the Florida Administrative Code (F.A.C.). These may all be accessed through the Florida Board of Nursing's website: www.doh.state.fl.us/mqa/nursing/. Look for the menu item "Laws and Rules" and click on this.

The laws which set forth various grounds for discipline include:

Chapter 456, Florida Statutes (which applies to all licensed health professionals).

Chapter 464, Florida Statutes (the Nurse Practice Act).

Chapter 64B9, Florida Administrative Code (Rules adopted by the Board of Nursing).

Basically, the nurse may be disciplined for any violation of the Nurse Practice Act, for any violation of Chapter 456, Florida Statutes, for violation of any Rule of the Board of Nursing (Chapter 64B9, F.A.C.), for violation of any law applicable to nurses or nursing, or for violation of any final order of the Board of Nursing or Department of Health. The most ambiguous of these tends to be actions of the nurse which fail to meet "minimal standards of acceptable and prevailing nursing practice" (sometimes called "falling below the standard of nursing practice" or "substandard performance"), as stated in Section 464.018, Florida Statutes.

II. DISCIPLINARY ACTION AGAINST NURSES PROVIDED BY STATUTE

Section 464.018, Florida Statutes sets forth the circumstances in which the Board of Nursing may take disciplinary action against a licensed nurse. In addition, the Act provides the types of disciplinary actions which may be taken against nursing professionals once the Board finds that grounds for disciplinary action exist. The Act applies to registered nurses, licensed practical nurses and advanced registered nurse practitioners.

A. GROUNDS FOR DISCIPLINARY ACTION SPECIFIED IN THE NURSE PRACTICE ACT

Section 464.016, Florida Statutes, provides that the following are considered to be acts that are criminal in nature and can result in criminal prosecutions, either as felonies or serious misdemeanors:

1. Practicing advanced or specialized, professional, or practical nursing, as defined in this part, unless holding an active license or certificate to do so.
2. Using or attempting to use a license or certificate which has been suspended or revoked.
3. Knowingly employing unlicensed persons in the practice of nursing.
4. Obtaining or attempting to obtain a license or certificate under this part by misleading statements or knowing misrepresentation.
5. Using the name or title "Nurse," "Registered Nurse," "Licensed Practical Nurse," "Clinical Nurse Specialist," "Certified Registered Nurse Anesthetist," "Certified Nurse Midwife," "Advanced Registered Nurse Practitioner," or any other name or title which implies that a person was licensed or certified as same, unless such person is duly licensed or certified.
6. Knowingly concealing information relating to violations of this part (of Florida Statutes).

Section 464.017, Florida Statutes, prohibits any sexual misconduct in the practice of nursing.

Disciplinary action may be taken against the nurse's license, through administrative proceedings, under the following circumstances, as provided by Section 464.018, Florida Statutes:

1. Procuring, attempting to procure, or renewing a license to practice nursing by bribery, by knowing misrepresentations, or through an error of the department or the board;
2. Having a license to practice nursing revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of another state, territory, or country;
3. Being convicted or found guilty of, or entering a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the practice of nursing or to the ability to practice nursing;
4. Being found guilty, regardless of adjudication, of any of the following offenses:
 - a. A forcible felony as defined in Chapter 776, Florida Statutes;
 - b. A violation of Chapter 812, Florida Statutes, relating to theft, robbery, and related crimes;
 - c. A violation of Chapter 817, relating to fraudulent practices;

- d. A violation of Chapter 800, relating to lewdness and indecent exposure;
 - e. A violation of Chapter 784, Florida Statutes, relating to assault, battery, and culpable negligence;
 - f. A violation of Chapter 827, Florida Statutes, relating to child abuse;
 - g. A violation of Chapter 415, Florida Statutes, relating to protection from abuse, neglect, and exploitation; and
 - h. A violation of Chapter 39, Florida Statutes, relating to child abuse, abandonment, and neglect.
5. Having been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under Section 435.03, Florida Statutes, or under any similar statute of another jurisdiction; or having committed an act which constitutes domestic violence as defined in Section 741.28, Florida Statutes;
 6. Making or filing a false report or record, which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, willfully impeding or obstructing such filing or inducing another person to do so. Such reports or records shall include only those which are signed in the nurse's capacity as a licensed nurse;
 7. False, misleading, or deceptive advertising;
 8. Unprofessional conduct, as defined by board rule;
 9. Engaging or attempting to engage in the possession, sale, or distribution of controlled substances as set forth in chapter 893, for any other than legitimate purposes authorized by this part;
 10. Being unable to practice nursing with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, or chemicals or any other type of material or as a result of any mental or physical condition;
 11. Failing to report to the department any person who the licensee knows is in violation of this part or of the rules of the department or the board; however, if the licensee verifies that such person is actively participating in a board-approved program for the treatment of a physical or mental condition, the licensee is required to report such person only to an impaired professionals consultant;
 12. Knowingly violating any provision of this part, a rule of the board or the department, or a lawful order of the board or department previously entered in a disciplinary proceeding or failing to comply with a lawfully issued subpoena of the department;
 13. Failing to report to the department any licensee under Chapter 458 or under Chapter 459, Florida Statutes, who the nurse knows has violated the grounds for disciplinary action set out in the law under which that person is licensed and who provides health care services in a facility licensed under Chapter 395, Florida Statutes, or a health maintenance

organization certificated under part I of Chapter 641, Florida Statutes, in which the nurse also provides services;

14. Failing to meet minimal standards of acceptable and prevailing nursing practice, including engaging in acts for which the licensee is not qualified by training or experience; and
15. Violating any provision of this Chapter or Chapter 456, Florida Statutes, or any rules adopted pursuant thereto.

B. GROUNDS FOR DISCIPLINARY ACTION SPECIFIED IN CHAPTER 456, FLORIDA STATUTES

Section 456.072, Florida Statutes, which applies to nurses and all other licensed health professionals, also provides the following as grounds for disciplinary action against a nurse's license:

1. Making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession.
2. Intentionally violating any rule adopted by the board or the department, as appropriate.
3. Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.
4. Using a Class III or a Class IV laser device or product, as defined by federal regulations, without having complied with the rules adopted under Section 501.122(2), Florida Statutes, governing the registration of the devices.
5. Failing to comply with the educational course requirements for human immunodeficiency virus and acquired immune deficiency syndrome.
6. Having a license or the authority to practice any regulated profession revoked, suspended, or otherwise acted against, including the denial of licensure, by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law. The licensing authority's acceptance of a relinquishment of licensure, stipulation, consent order, or other settlement, offered in response to or in anticipation of the filing of charges against the license, shall be construed as action against the license.
7. Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department against another licensee.
8. Attempting to obtain, obtaining, or renewing a license to practice a profession by bribery, by fraudulent misrepresentation, or through an error of the department or the board.

9. Failing to report to the department any person who the licensee knows is in violation of this chapter, the chapter regulating the alleged violator, or the rules of the department or the board.
10. Aiding, assisting, procuring, employing, or advising any unlicensed person or entity to practice a profession contrary to this chapter, the chapter regulating the profession, or the rules of the department or the board.
11. Failing to perform any statutory or legal obligation placed upon a licensee. For purposes of this section, failing to repay a student loan issued or guaranteed by the state or the Federal Government in accordance with the terms of the loan or failing to comply with service scholarship obligations shall be considered a failure to perform a statutory or legal obligation, and the minimum disciplinary action imposed shall be a suspension of the license, followed by probation and a fine.
12. Making or filing a report which the licensee knows to be false, intentionally or negligently failing to file a report or record required by state or federal law, or willfully impeding or obstructing another person to do so. Such reports or records shall include only those that are signed in the capacity of a licensee.
13. Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.
14. Exercising influence on the patient or client for the purpose of financial gain.
15. Practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform.
16. Delegating or contracting for the performance of professional responsibilities by a person when the licensee delegating or contracting for performance of the responsibilities knows, or has reason to know, the person is not qualified by training, experience, and authorization when required to perform them.
17. Violating a lawful order of the department or the board, or failing to comply with a lawfully issued subpoena of the department.
18. Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding.
19. Failing to comply with the educational course requirements for domestic violence.
20. Failing to identify through written notice, which may include the wearing of a name tag, or orally to a patient the type of license under which the practitioner is practicing. Any advertisement for health care services naming the practitioner must identify the type of license the practitioner holds. This paragraph does not apply to a practitioner while the

practitioner is providing services in a facility licensed under chapter 394, chapter 395, chapter 400, or chapter 429. Each board, or the department where there is no board, is authorized by rule to determine how its practitioners may comply with this disclosure requirement.

21. Failing to comply with the requirements of Section 381.026 and 381.0261, Florida Statutes, to provide patients with information about their patient rights and how to file a patient complaint.
22. Engaging or attempting to engage in sexual misconduct as defined and prohibited in Section 456.063(1), Florida Statutes.
23. Failing to comply with the requirements for profiling and credentialing, including, but not limited to, failing to provide initial information, failing to timely provide updated information, or making misleading, untrue, deceptive, or fraudulent representations on a profile, credentialing, or initial or renewal licensure application.
24. Failing to report to the board, or the department if there is no board, in writing within 30 days after the licensee has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction. Convictions, findings, adjudications, and pleas entered into prior to the enactment of this paragraph must be reported in writing to the board, or department if there is no board, on or before October 1, 1999.
25. Using information about people involved in motor vehicle accidents which has been derived from accident reports made by law enforcement officers or persons involved in accidents under Section 316.066, Florida Statutes or using information published in a newspaper or other news publication or through a radio or television broadcast that has used information gained from such reports, for the purposes of commercial or any other solicitation whatsoever of the people involved in the accidents.
26. Being unable to practice with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition. In enforcing this paragraph, the department shall have, upon a finding of the State Surgeon General or the State Surgeon General's designee that probable cause exists to believe that the licensee is unable to practice because of the reasons stated in this paragraph, the authority to issue an order to compel a licensee to submit to a mental or physical examination by physicians designated by the department. If the licensee refuses to comply with the order, the department's order directing the examination may be enforced by filing a petition for enforcement in the circuit court where the licensee resides or does business. The department shall be entitled to the summary procedure provided in Section 51.011, Florida Statutes. A licensee or certificate holder affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume the competent practice of his or her profession with reasonable skill and safety to patients.

27. Testing positive for any drug, as defined in Section 112.0455, Florida Statutes, on any confirmed preemployment or employer-ordered drug screening when the practitioner does not have a lawful prescription and legitimate medical reason for using the drug.
28. Performing or attempting to perform health care services on the wrong patient, a wrong-site procedure, a wrong procedure, or an unauthorized procedure or a procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition. For the purposes of this paragraph, performing or attempting to perform health care services includes the preparation of the patient.
29. Leaving a foreign body in a patient, such as a sponge, clamp, forceps, surgical needle, or other paraphernalia commonly used in surgical, examination, or other diagnostic procedures. For the purposes of this paragraph, it shall be legally presumed that retention of a foreign body is not in the best interest of the patient and is not within the standard of care of the profession, regardless of the intent of the professional.
30. Violating any provision of this chapter, the applicable practice act, or any rules adopted pursuant thereto.
31. With respect to making a personal injury protection claim as required by Section 627.736, Florida Statutes, intentionally submitting a claim, statement, or bill that has been "upcoded" as defined in Section 627.732, Florida Statutes.
32. With respect to making a personal injury protection claim as required by Section 627.736, Florida Statutes, intentionally submitting a claim, statement, or bill for payment of services that were not rendered.
33. Engaging in a pattern of practice when prescribing medicinal drugs or controlled substances which demonstrates a lack of reasonable skill or safety to patients, a violation of any provision of this chapter, a violation of the applicable practice act, or a violation of any rules adopted under this chapter or the applicable practice act of the prescribing practitioner.
34. Being terminated from a treatment program for impaired practitioners, which is overseen by an impaired practitioner consultant as described in Section 456.076, Florida Statutes, for failure to comply, without good cause, with the terms of the monitoring or treatment contract entered into by the licensee, or for not successfully completing any drug treatment or alcohol treatment program.

C. TYPES OF DISCIPLINARY ACTION

If the Board of Nursing finds that a nursing professional is guilty of any of the foregoing grounds, the Board may impose any of the following penalties, as set forth in Section 464.018(2), Florida Statutes:

1. Refusal to certify, or to certify with restrictions, to the department an

- application for licensure;
2. Suspension or permanent revocation of a license;
 3. Restriction of practice;
 4. Imposition of an administrative fine not to exceed \$1,000 for each count or separate offense;
 5. Issuance of a reprimand or letter of concern;
 6. Placement of the licensee on probation for a period of time and subject to such conditions as the board, or the department when there is no board, may specify;
 7. Corrective action;
 8. Imposition of an administrative fine in accordance with Section 381.0261, Florida Statutes, for violations regarding patient rights;
 9. Refund of fees billed and collected from the patient or a third party on behalf of the patient; and
 10. Requirement that the practitioner undergo remedial education.

The Board of Nursing has published in the past a list of variables it considers when deciding whether or not to impose suspension or probation in a disciplinary case. It is contained in Appendix 13-1 of this Chapter.

III. REINSTATEMENT

The Board of Nursing will not reinstate or issue a nurse's license to an incompetent practitioner until the Board determines the nurse capable of safely practicing as a nurse and that the nurse has complied with all the terms and conditions of the order suspending or revoking the license. The Board will not reinstate a nurse's license who has been found guilty by the Board on three separate occasions of diverting drugs or narcotics from patients to personal use or sale.

IV. CERTIFIED NURSING ASSISTANTS

Section 464.204, Florida Statutes, provides the grounds for which disciplinary action may be taken against a Certified Nursing Assistant (CNA). In addition, the statute also provides the types of disciplinary actions that may be taken.

A. GROUNDS FOR DISCIPLINARY ACTION

The Board of Nursing may discipline a CNA for the following acts under Section 464.204(1), Florida Statutes:

1. Obtaining or attempting to obtain certification or an exemption, or possessing or attempting to possess certification or a letter of exemption, by bribery, misrepresentation, deceit, or through an error of the board; and
2. Intentionally violating any provision of this Chapter, Chapter 456, Florida Statutes, or the rules adopted by the board.

Chapter 456, Florida Statutes, provides general regulations, which apply to all health occupations and professionals.

B. TYPES OF DISCIPLINARY ACTIONS

Section 464.204(2), Florida Statutes, provides the types of disciplinary action that may be taken against a CNA who violated Section 464.204(1), Florida Statutes. The statute sets forth the types of penalties allowed and provides in relevant part:

1. Denial, suspension, or revocation of certification;
2. Imposition of an administrative fine not to exceed \$150 for each count or separate offense; and
3. Imposition of probation or restriction of certification, including conditions such as corrective actions as retraining or compliance with an approved treatment program for impaired practitioners.

C. EXEMPTIONS FROM DISQUALIFICATION OF EMPLOYMENT

Section 464.204(3), Florida Statutes, provides a mechanism for CNAs to request a letter of exemption from the Board, in order to prevent the CNA from being disqualified for employment. The statute states in relevant part:

The board may, upon the request of a certificate holder, exempt the certificate holder from disqualification of employment in accordance with Chapter 435, Florida Statutes, and issue a letter of exemption. The board must notify an applicant seeking an exemption from disqualification from certification or employment of its decision to approve or deny the request within 30 days after the date the board receives all required documentation.

V. CONCLUSION

There are many pitfalls into which a nursing professional may fall. It is important to know the above listed grounds for discipline for your respective field of nursing. It is even more important, however, to avoid engaging in any of the activities which may subject you to disciplinary actions.

Actions for professional discipline start with a complaint, followed by an investigation. These proceedings have the potential of complicating, if not concluding, a professional nurse's career. As such, they must be taken seriously and treated in the same manner as any other prosecution by the nurse in question. The authors of this manual suggest that nurses not provide written or verbal statements to investigators without first speaking to an attorney who specializes in disciplinary proceedings against health care providers.

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APPENDIX 13-1

LIST OF VARIABLE USED BY THE BOARD OF NURSING IN DETERMINING WHEN TO IMPOSE PROBATION OR SUSPENSION

PROBATION AND SUSPENSION VARIABLES

PROBATION OPTIONS

- P-1 Grant license & place on probation for _____ months/years.
- P-2 Grant GN/GPN; license upon passing NCLEX; probation for _____ months/years.
- P-3 Place license on probation for _____ months/years.
- P-4 License suspended; suspension stayed; probation for _____ months/years.

PROBATION VARIABLES

- A: Violate no laws
- B: Report whereabouts
- C: Quarterly self reports; suspend if one report is not submitted
- D: Inform employer; quarterly employer reports
- E: Counseling
- F: Continuing education (is home study acceptable?)
- G: Probation tolled
- H: Direct supervision; regularly assigned unit
- I: Administrative fine (to be paid within 60 days)
- C-4: Cost of probation (in all orders)

SUSPENSION VARIABLES

1. Suspended with specific time before can appear; demonstrates ability to practice safely
2. Suspended until appears, psychiatric evaluation (MMPI?); re-entry plan, proof of counseling/treatment if recommended
3. Suspended with specific time before can appear; psychiatric evaluation (MMPI?), re-entry plan; proof of counseling/treatment if recommended; document sobriety
4. Suspended until fine and worthless check paid
5. Suspended until submits proof continuing education completed and fine of \$_____ paid
6. Entry into Intervention Project for Nurses
 - V6A: Suspension lifted upon entry into and compliant with IPN
 - V6B: Suspension lifted upon IPN evaluation. If treatment indicated, must participate in IPN; if no treatment indicated, no further action
 - V6C: Suspension lifted upon IPN evaluation. If treatment indicated, must participate in IPN; if no treatment indicated or IPN unsuitable, probation for _____ months/years
7. Revocation for _____ months/years; may reapply
8. Permanent Revocation; may not reapply