

Nevada State Board of NURSING FACT SHEET

What Happens If A Complaint Is Filed Against You?

What are your rights?
How is the complaint investigated?
What happens at a formal hearing?

What is a complaint?

A complaint contains a detailed description of alleged behavior that violates the Nurse Practice Act. It must include the name of the nurse or nursing assistant, and a description of the event(s).

Who can make a complaint?

Anyone who has information that a person may have violated the Nurse Practice Act may make a complaint. This includes consumers, other regulatory agencies, and other nurses or professionals. Some nurses report themselves and seek assistance in handling a problem in a way that best protects the public. The law provides, in the absence of bad faith, any person who reports such information or who testifies before the Board in a hearing shall not be liable for civil damages.

It is the responsibility of the Nevada State Board of Nursing to protect the health, safety and welfare of Nevada's citizens by regulating the practice of nursing.

One way the Board does this is through the disciplinary process. If the Board receives information that a licensed nurse or nursing assistant may have broken the law (the Nevada Nurse Practice Act), the Board has the authority to investigate.

What are common types of violations?

- Practicing beyond scope
- Negligence, abuse, exploitation
- Fraudulent application (e.g. failing to report criminal convictions or previous disciplinary action)
- Problems with drugs and/or alcohol which result in impaired practice
- Incompetence
- Criminal convictions related to the qualifications, functions and duties of a nurse

What happens when the Board receives a complaint?

The complaint is reviewed to ensure it names a nurse or nursing assistant who is licensed or certified in the state of Nevada, and alleges a violation of the Nurse Practice Act.

Board staff, including Board counsel, then determine if the information alone or together with evidence, documentary or otherwise, is sufficient to require an investigation. This means that the information submitted, at face value, would be a potential violation of the Nurse Practice Act.

If the complaint meets the criteria, or the Board has directed an investigation, the matter is then assigned to an investigator.

Who investigates you?

The Board's investigators are registered nurses and other professionals with extensive training in investigative procedure and analysis. Their experience and expertise covers a wide variety of nursing and other specialties.

How do you find out a complaint has been filed against you?

You'll receive a notification by certified letter, containing the allegations submitted against you and the name of the person(s) who filed the complaint.

It describes your rights, including the opportunity to respond to the allegations and the right to representation by an attorney at any time during the investigation. The notice also informs you about potential disciplinary outcomes, including the possibility of being charged hearing costs.

It also contains the name and telephone number of the investigator assigned to your case. This notice is the first step in the investigation process.

Who is required to report violations?

Those required to report violations of the Nurse Practice Act include individuals providing medical services who are licensed or certified to practice in Nevada, law enforcement personnel, social workers, and medical administrators. For a comprehensive listing, refer to the Nurse Practice Act, NRS 632.472.

What if I'm not sure if it really is a violation?

First, read the Nurse Practice Act. If you're still unsure, call one of the Board offices and talk with one of the investigators.

How do I make a complaint?

Visit nevadanursingboard.org, click on 'Submit Complaint'. You may also submit a written description of the sequence of events (who, what, where, when, why, how). The complaint should also include any documentation which supports the allegation, for example, a witness statement or patient record.

What happens during an investigation?

An investigation involves gathering and reviewing a variety of documents, some of which may have to be subpoenaed. For example, an investigator may obtain relevant parts of personnel files and patient records. Interviewing witnesses is also an important component.

The fact an investigation is taking place is not public information—if questions are asked by the news media or others, the Board cannot confirm or deny that any investigation is in process.

What happens after all the evidence has been gathered?

After gathering and analyzing the data, the investigator presents the evidence for internal review. A decision is made to pursue the complaint or close the investigation.

When an investigation is closed, the investigative file is confidential and is not available to the public.

If the complaint is pursued, ongoing reviews of the investigation, its progress, and its conclusions are done by the Board's Director of Nursing Practice, its Executive Director, and the Board's general counsel.

What you should know about the investigator's position as it relates to you and the complaint.

The investigator is an independent fact-gatherer whose position is to obtain as much information regarding the complaint allegations as possible. It is not the position of the investigator to prove you guilty or innocent, but rather to collect information and evidence regarding the allegations.

A respondent (the person against whom the complaint is filed) that does not respond when sent notice of the complaint and investigation places the investigator in a position where they are not able to obtain the respondents

“side of the story” when the case is reviewed. This doesn't mean that you will be found guilty if you do not respond; however, by not responding, the investigator may not be aware of certain evidence or witness statements which may be supportive of you.

You may call the investigator at any time with questions or concerns, unless you are represented by an attorney. In that case, the investigator will only communicate with the attorney.

What are the potential disciplinary outcomes?

1. The complaint is closed.

If the evidence obtained is not sufficient to support a violation of the Nurse Practice Act, the complaint may be closed by Board staff. The Board notifies you by letter.

2. You can enter into a settlement agreement.

If the evidence supports a violation of the Nurse Practice Act, you may be offered a *Settlement Agreement*.

The type of agreement offered depends on the nature of the violation and your pattern of behavior.

A *Settlement Agreement* includes an admission that a violation has occurred, and is an agreement between you and the Board for disciplinary action.

If you sign the agreement, the agreement is placed on the Board's agenda for the next available Board meeting and is not implemented until accepted by the Board. (The Board may accept or reject the agreement, providing one of the many checks and balances in the discipline process.)

Upon acceptance of the settlement agreement, the disciplinary action is published on the list of disciplinary actions taken by the Board and reported to the National Council of State Boards of Nursing (NCSBN) and other relevant national databanks, such as the National Practitioner Data Bank, and/or the Healthcare Integrity and Protection Data Bank.

You must complete all requirements of the agreement within the scheduled time frame or be subject to further disciplinary action by the Board.

3. You can have a formal hearing before the Board.

If the matter cannot be resolved through the settlement process or you request a formal hearing, the case will be presented to the Board.

The Board's general counsel files formal charges in an *Administrative Complaint and Notice of Hearing*, which is sent to you. You will receive the notice of the date and approximate time of the hearing at least 21 working days before the scheduled hearing. This formal complaint is public record.

During the administrative hearing, the general counsel presents the Board's case. Then you and/or your attorney have the opportunity to present your side of the case and call and cross-examine any witnesses.

The Board members may ask questions of the participants at any point in the hearing.

The Board members consider each case individually, taking both mitigating and aggravating circumstances into account. These seven independent people bring different backgrounds, experiences and perspectives to the Board, which leads to a balanced exploration of all sides to a case.

After hearing the case, the Board will decide if you are guilty of violating the Nurse Practice Act and issue an order iden-

tifying its decision.

If you are present, you will be informed of the Board's decision at the end of the hearing. The *Findings of Fact, Conclusions of Law, and Order* will be mailed to you.

Actions the Board can take range from dismissing the complaint to revoking your license or certificate for up to 20 years. If you are found guilty of a violation, you may be ordered to pay the costs of the investigation and hearing.

The disciplinary action will be published on the list of disciplinary actions the Board has taken and reported to the NCSBN, and other relevant national databanks, such as the National Practitioner Data Bank, and/or the Healthcare Integrity and Protection Data Bank.

What does the NCSBN do with disciplinary information?

The National Council of State Boards of Nursing collects disciplinary information from, and distributes it to, all state boards of nursing. The state boards use this information for discipline and licensing purposes. Action taken by the Board may affect your license or certificate to practice in another state.

What if I never receive notices from the Board?

By law, the Board is required to send the notice of complaint, the *Administrative Complaint and Notice of Hearing*, and the *Findings of Fact, Conclusions of Law, and Order* to your address of record. By law, you must notify the Board when you change your address. If you don't, you may not receive these important documents and the Board may take disciplinary action against your license or certificate without hearing your side of the case.

What are common types of disciplinary actions?

When considering what kind of disciplinary action it should take, the Board always asks itself, "What is needed to make this person safe to practice?" The answer depends on the nature of the violation, and can range from reprimanding an individual and ordering the person to attend a legal ethics class to revoking the person's license or certificate. Outlined in the Nurse Practice Act, NRS 632.347, discipline actions available to the Board include:

- Citation and/or Fine
- Reprimand
- Probation
- Suspension
- Revocation

Whom can I call if I have questions about the complaint or disciplinary process?

The Board encourages you to call any time you have a question about the discipline process or what constitutes a violation of the Nurse Practice Act. Just call the Reno or Las Vegas office and ask for one of the investigators or the Director of Nursing Practice.

The Complaint Process

(The Nevada State Board of Nursing follows this process for all complaints against nurses or nursing assistants)

If a complaint is filed against you, what are your due process rights?

- The right to submit a response to the complaint and/or discuss it with the investigator.
- The right to consult with an attorney at any time during the course of an investigation. However, it is not mandatory that you have an attorney represent you before the Board.
- The right to obtain a copy of the complaint (by written request.)
- The right to a formal hearing before the Board regarding the allegations against you.
- Upon receipt of an *Administrative Complaint and Notice of Hearing*, you have the right to all evidence which may be presented against you at the hearing (copying fee applies), and the right to be informed of laws and regulations involved.
- At the formal administrative hearing, you have the right to present evidence and witnesses on your behalf, and to cross-examine witnesses presented by the Board.
- The right to appeal.

