

Nevada State Board of **NURSING FACT SHEET**

What Happens When You File A Complaint?

Who investigates your complaint?
How is the complaint investigated?
What are the potential outcomes?

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 it must be submitted in writing and signed by the person making the complaint.

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 certified nursing assistant (CNA) 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 or CNA

What happens when the Board receives a complaint?

The complaint is reviewed to ensure it is signed by the person making the complaint, 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 one of five investigators who each handle about 100 active cases at a time.

Who investigates your complaint?

The Board's investigators receive extensive training in investigative procedure and analysis. Their nursing experience and expertise cover a wide variety of nursing specialties.

How do nurses and CNAs know if a complaint has been filed against them?

They receive a notification by certified letter, containing the allegations submitted against them and the name of the person(s) who filed the complaint.

It describes their 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 them 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 their case. This notice is the first step in the investigation process.

Who is required to report violations?

While anyone can file a complaint, certain persons are required by law to report violations of the Nurse Practice Act. Those persons include individuals providing medical services who are licensed or certified to practice in Nevada, law enforcement personnel, social workers, and medical administrators.

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

Call the Board's Reno office and ask to talk with one of the investigators.

What are some examples of violations?

- Evidence of impaired practice, even though the nurse may have a valid prescription for controlled substances
- Any violation that results in patient death, or patient harm to the extent that additional hospitalization is required,
- Conduct that requires further nursing or medical intervention, which would not have otherwise been necessary

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. You will receive a letter letting you know the complaint has been closed.

If the complaint is pursued, ongoing reviews of the investigation, its progress, and its conclusions are done by the Board's director of operations, 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 the individual guilty or innocent, but rather to collect information and evidence regarding the allegations.

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.

Reasons the Board may close your complaint:

- **Lack of jurisdiction (the individual is not a nurse or CNA, or the complaint is about the facility, billing practices, or other area over which the Board has no legal jurisdiction)**
- **Lack of sufficient evidence, for example, if the case is solely that of one person's word against another's**
- **Incident happened so long ago that documents and witnesses are unavailable**
- **The violation did not rise to the level of discipline (for example, a single medication error with no patient harm)**
- **The error was a result of the system, not the individual**
- **The problem had already been identified by the individual and/or employer and addressed through remediation**

This list is only meant to provide examples. Each complaint is reviewed thoroughly to determine whether it does constitute a violation of the law.

Options you may take if your complaint is closed:

- **submit more evidence**
- **go up the chain of command at the facility where the problem occurred (if you haven't done so already)**
- **file a complaint with another agency that may have jurisdiction**

2. The individual may enter into a settlement agreement.

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

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

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

If the nurse or CNA signs 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 Board will send you a letter notifying you that your complaint resulted in disciplinary action. In addition, the 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.

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

3. The nurse or CNA can have a formal hearing before the Board.

If the matter cannot be resolved through the settlement process or the nurse or CNA requests 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 the nurse or CNA with a notification of the date and approximate time of the hearing at least 20 calendar days before the scheduled hearing. Depending on the nature of the case, you may be subpoenaed to testify at the hearing.

During the administrative hearing, the general counsel presents the Board's case. Then the nurse or CNA and/or attorney have the opportunity to present their 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 of a case.

After hearing the case, the Board will decide if the nurse or CNA is guilty of violating the Nurse Practice Act and issue an order identifying its decision.

If you are present, you will know the Board's decision at the end of the hearing. If you are not, you will be notified by mail.

Actions the Board can take range from dismissing the complaint to revoking a license or certificate for up to 10 years. If a nurse or CNA is found guilty of a violation, he or she may be ordered to pay investigation and hearing costs.

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 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 632.325, 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 office and ask for one of the nurse investigators or the director of operations.

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 a nurse or CNA, what are their 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 an individual has attorney representation.
- the right to obtain a copy of the complaint (by written request and a 60-cents-per-page copying fee).
- the right to a formal hearing before the Board regarding the allegations against the nurse or CNA.
- Upon receipt of an *Administrative Complaint and Notice of Hearing*, the right to all evidence which may be presented against the nurse or CNA at the hearing (copying fee applies), and the right to be informed of laws and regulations involved.
- At the formal administrative hearing, the right to present evidence and witnesses on their behalf, and to cross-examine witnesses presented by the Board.
- the right to appeal.

