



## Disciplinary Policy

# Disciplinary Sanctions for Certified Nursing Assistants with Chemical Dependence

The Oregon State Board of Nursing, in keeping with its mission to protect the public health, safety and welfare believes it is important to have a clear position on how it will deal with Certified Nursing Assistants who have a diagnosis of chemical dependence or who demonstrate a pattern of substance abuse which may affect the ability to safely perform the duties of a nursing assistant.

This policy applies only to Certified Nursing Assistant and Certified Medication Aides (hereafter referred to as "Certified Nursing Assistant"). It does not apply to applicants for certification. The Board has adopted a separate policy to address fitness for certification when an applicant for certification has a history of drug and alcohol abuse or convictions related to drug and alcohol abuse.

This policy also does not apply to Registered Nurses or Licensed Practical Nurses with chemical dependence. For those licensees the Board has the Nurse Monitoring Program, an alternative to formal discipline.

The Board adopts the following assumptions as the basis for its position:

- 1) Patients\* under the care of a Certified Nursing Assistant are vulnerable by virtue of illness or injury and the dependent nature of the nursing assistant-patient relationship.
- 2) Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, patients whose mental or cognitive ability is compromised and patients who are disabled and immobilized.
- 3) Certified Nursing Assistants are able to provide care in private homes and home-like setting without direct supervision.
- 4) Certified Nursing Assistants who are chemically dependent or who abuse drugs or alcohol and whose judgment may be impaired while caring for patients are at risk for harming patients.
- 5) The disease of chemical dependence is a treatable disease. Certified Nursing Assistants who are in active recovery may be able to safely provide care to vulnerable patients. Recovery is a process of learning new behaviors, attitudes and life style which takes time after initial treatment to assure that the person is in a stable state of recovery.
- 6) Certified Nursing Assistants who demonstrate a pattern of substance abuse, without a diagnosis of chemical dependence and without recommended treatment, may require monitoring to assure the Board of their ability to safely perform the duties of a nursing assistant.

\*The terms "resident" or "client" are often used interchangeably with the term "patient" in health care facilities. For the purpose of this policy, the term "patient" includes all of these terms.

The Board believes it has a responsibility to both the public and the Certified Nursing Assistant when information about substance abuse in a nursing assistant comes to the Board's attention. The responsibility to the public is for swift action to remove a Certified Nursing Assistant from performing duties involving direct patient care until the nursing assistant is deemed safe to return to those duties. The Board's responsibility towards the Certified Nursing Assistant is to recognize that person's past service in the provision of patient care and give that person an opportunity to resolve the substance abuse problem and then return to providing patient care.

## **Impairment in the Workplace**

A Certified Nursing Assistant may be impaired in the workplace due to consumption of drugs and/or alcohol either before coming to work or during work hours. The Board encourages both employers of Certified Nursing Assistants and co-workers to be familiar with the myriad of signs and symptoms associated with impairment and to report suspicion of impairment so the Certified Nursing Assistant can be removed from a patient care assignment and the risk of harming patients. Impairment should be reported to the Board for investigation. Certified Nursing Assistants may also obtain medications through theft from the facility or from a patient in a home or home-like setting. Theft of drugs raises the question of substance abuse and must also be investigated.

A Certified Nursing Assistant who is reported to the Board for impairment in the workplace or diversion of drugs will be required to obtain a chemical dependence evaluation from a qualified drug and alcohol counselor. If the person is diagnosed as chemically dependent and is willing to attend and successfully complete treatment, the Certified Nursing Assistant will be given the opportunity to return to work as a nursing assistant under monitoring conditions determined through a stipulated agreement with the Board. At a minimum those conditions will include a recommendation from the treatment program regarding fitness to return to work, proof of working an active program of recovery, regular contact with the Board, employer evaluations of performance and random drug testing. A Certified Nursing Assistant who is not willing or able to attend treatment will be offered the opportunity to voluntarily surrender the nursing assistant certificate or will be served a Notice of Proposed Suspension and be given the opportunity for a hearing as provided in the Administrative Procedures Act.

If the person does not receive a diagnosis of chemical dependence, the Board will take the recommendations of the evaluator into account in regards to whether or not a period of monitoring by the Board is in the best interest for the public health and safety.

## **Crimes Related to Substance Abuse**

The Board understands that it may not rely solely on the conviction of a crime to impose a disciplinary sanction on a Certified Nursing Assistant. However, evidence of the conduct which is the basis for the conviction may be of concern to the Board. The Board will also consider a pattern of arrests for crimes related to substance abuse in regards to a pattern of behavior which may be of concern to the Board.

Crimes related to substance abuse range from those that are primarily harmful to the Certified Nursing Assistant to those that are harmful to others. Certified Nursing Assistants who have committed crimes such as Minor in Possession of Drugs/Alcohol, Possession of a Controlled Substance or Driving Under the Influence of Intoxicants will be required to obtain an evaluation to determine if the person has a diagnosis of chemical dependence. If the court requires the evaluation, the Board will use the results of that evaluation to determine fitness to function as a nursing assistant and whether monitoring by the Board is necessary for protection of the public.

Certified Nursing Assistants who have committed crimes which are clearly a danger to others, such as Manufacture and Distribution of a Controlled Substance or Conspiracy to Distribute Opium will be considered on an individual basis and may be required to complete a drug and alcohol evaluation. The Board views crimes related to substance abuse which are harmful to others as more serious than those where harm is directed mainly at the Certified Nursing Assistant. If the individual facts of a case show harm to others, the Board will serve a Notice of Proposed Revocation of the certificate of the nursing assistant and the person will have the opportunity to a hearing as provided in the Administrative Procedures Act.

## **Petition for Reinstatement of Certificate**

A Certified Nursing Assistant whose certificate has been revoked or suspended or who has voluntarily surrendered the certificate due to chemical dependence or crimes related to substance abuse has the right to request the Board for reinstatement of the certificate. The burden of proof will be on the certificate holder that

he/she is in recovery from chemical dependence, no longer abuses drugs or alcohol and has been rehabilitated to the extent that he/she no longer poses a threat to the public health, safety and welfare. Should the Board reinstate certification, the nursing assistant may be required to retrain or retest before a certificate is issued to the nursing assistant.

**Adopted:** February 10, 2000