

Disciplinary Sanctions for Lying and Falsification

The Oregon State Board of Nursing, in keeping with its mission to protect the public health, safety and welfare, believes it is important to take a position regarding the licensure and certification of individuals who have engaged in deception in the provision of health care. This deception includes falsifying documents related to patient care and falsifying documents related to licensure and certification. The Board is also concerned about persons who have been convicted of a crime involving deception to the extent that such conduct may affect the ability to safely care for patients.

The Board's position applies to Certified Nursing Assistants, Certified Medication Aides, Licensed Practical Nurses, Registered Nurses, advanced practice nurses (Nurse Practitioners, Certified Registered Nurse Anesthetists, Clinical Nurse Specialists) and applicants for licensure or certification (all hereafter referred to as "nurse/nursing assistant").

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

1. Patients¹ under the care of a nurse/nursing assistant are vulnerable by virtue of illness or injury and the dependent nature of the nurse/nursing assistant-patient relationship.
2. Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised, and patients who are disabled or immobilized.
3. Nurses/nursing assistants are frequently in situations where they must report patient condition, record objective/subjective information, provide patients with information, and report errors in the nurse/nursing assistant's own practice or conduct.
4. Honesty, accuracy and integrity are personal traits valued by the nursing profession, and considered imperative for the provision of safe and effective nursing care.
5. Patients have the right to expect that the nurse/nursing assistant will always accurately report patient conditions, signs and symptoms, and the care the nurse/nursing assistant provided.
6. Falsification of documents regarding patient care, incomplete or inaccurate documentation of patient care, failure to provide the care documented, or other acts of deception raise serious concerns whether the nurse/nursing assistant will continue such behavior and jeopardize the effectiveness of patient care in the future.
7. Falsification of documents or deception/lying outside of the workplace, including falsification of an application for licensure or certification to the Board or lying during the course of an investigation, raises concerns about the person's propensity to lie, and the likelihood that such conduct will continue in the practice of nursing.
8. Conviction of a crime involving lying or falsification raises concern that the person may engage in similar conduct while practicing nursing and place patients at risk.

¹ The terms "resident" or "client" are often substituted for the term "patient" in healthcare facilities. For the purposes of this document "patient" includes all of these terms.

Crimes Related to Lying and Falsification

The Board understands that it may not rely solely on the conviction of a crime to deny, suspend or revoke a license or certificate. However, the evidence of the conduct which is the basis for the conviction may be of concern to the Board.

The Board has adopted a policy on theft, fraud and deception which, in part, addresses the issues of lying and falsification. Conviction for a crime of lying or falsification is a concern to the Board if the conduct involved defrauding a vulnerable person; if the occurrence was within a short period of time prior to application for initial licensure or certification; if there is a demonstration of a pattern of lying or falsification; or if the act was obviously premeditated and the individual demonstrates a lack of insight or remorse related to the conduct.

The presence of these factors is evidence to the Board that the same behavior is likely to be repeated towards patients and may place their well being at risk. Conviction for crimes involving lying and falsification will be evaluated on an individual basis considering the above factors.

Licensure and Investigation

Each application for licensure and certification, whether it is an initial application by examination, an initial application by endorsement, or a renewal application, contains questions which require a "yes" or "no" answer. These questions ask whether or not the applicant has ever been arrested, charged with, convicted of, or been sentenced to any criminal offense; had disciplinary action taken against the license or certificate; has disciplinary action pending against the license or certificate; or if the applicant has a physical, mental or emotional condition that might affect the ability to function safely. In addition, the Board asks the applicant to provide information to determine if the applicant meets the practice requirement for nursing licensure or nursing assistant certification. Answers to these questions are used by the Board to determine the applicant's fitness for initial licensure/certification in regards to conviction history and physical or mental condition and eligibility to renew licensure or gain initial licensure/certification by endorsement related to meeting the practice requirement.

The Board can understand that an applicant may mark a "yes" or "no" answer in error, or misunderstand the question being asked. The Board believes, however, that supplying false information in regards to eligibility requirements for licensure/certification is a serious matter, not only because of the lying or falsification itself, but because those false answers would allow an otherwise disqualified applicant to be licensed or certified.

Each case of falsifying an application for licensure or certification will be considered on an individual basis. The investigative process will be used to determine whether the question was answered in error, misunderstood, or purposely answered falsely to deceive the Board. Intentional falsification may result in denial of licensure or certification, or revocation of a license/certificate. The Board may show leniency towards an applicant for initial licensure or certification (that is someone who has never been licensed or certified in any state) because the Board believes that person is more likely to misunderstand the questions on the application. The Board believes that an applicant for renewal of licensure or certification should understand the questions and the importance of answering them honestly. A pattern of falsification of information on an application for licensure and certification will not be tolerated and is grounds for revocation.

Failure to cooperate during the course of a Board investigation by lying, supplying false documents or failing to disclose information is also grounds for denial or revocation of the license/certificate.

Nurse Imposter

Nurse imposters range from a person who has had no nursing education and represents him or herself as an LPN or RN, to an individual who has some education and represents him or herself as licensed for a broader scope of practice (for example, CNA to LPN, or LPN to RN). The Board has no tolerance for any form of impersonating and will impose the maximum dollar amount of its civil penalty authority. The Board may also impose a disciplinary sanction for imposters who are licensed or certified at some level. The following factors will be considered in deliberating the level of discipline from reprimand through revocation: intent, harm to patients, length of time as an imposter, and insight/remorse.

The Board believes that employers of nurses should verify licensure or certification and thereby avoid hiring a nurse imposter. The Board may impose a civil penalty to the employer found responsible for hiring a nurse imposter.

Lying or Falsification within the Practice of Nursing or Performing Duties of a Nursing Assistant

The safe and effective practice of nursing as a Licensed Practical Nurse, Registered Nurse, or advanced practice nurse requires integrity, accuracy, and honesty in the provision of nursing care, including:

- performing nursing assessments.
- applying the nursing process.
- reporting changes in patient condition.
- acknowledging errors in practice and reporting them promptly.
- accurate charting.
- implementing care as ordered.

Safely performing the duties of a Nursing Assistant requires honesty in the provision of patient care, including reporting changes in patient condition to a licensed nurse, charting care as given, and recording vital signs accurately.

Failure to be accurate and honest while providing patient care and keeping accurate records related to care, is potentially harmful to the overall care patients receive because nurses who follow do not have a complete and accurate picture of the client's care/condition.

Each case of lying and falsification will be considered on an individual basis. The Board will consider the following factors:

- actual harm to the patient as a result of the lying or falsification.
- the potential for harm to clients.
- the past performance record of the nurse.
- prior complaints.
- accountability for the act of falsification.
- insight.
- remorse.
- other mitigating or aggravating factors.

The Board will also consider whether or not the nurse/nursing assistant was unduly influenced by a more experienced or supervising licensed nurse to falsify patient records or care, in which case that nurse's conduct will be investigated by the Board. The investigative process will be used as an opportunity to educate and reinforce acceptable standards of care. Disciplinary sanctions may range from a warning to revocation. The first complaint of lying or falsification which did not result in harm to a patient may be disciplined by a letter

of warning. The level of sanction will be directly proportionate to harm caused to the patient.

Lying/Falsification to an Employer, School of Nursing, or Nursing Assistant Training Program

The Board believes that falsification of an application to an employer, school of nursing, or nursing assistant training program is the responsibility of the employer, school or training program to resolve, unless the falsification involves misrepresentation of credentials, competencies or work experience which, if relied on by the employer, may jeopardize patient care. Misrepresentation of credentials to an employer, which results in harm to a patient or jeopardizes patient care, will be investigated and viewed by the Board in the same way that lying or falsification within the practice of nursing is viewed. A student nurse/nursing assistant who falsifies patient records or engages in other dishonesty in patient care gives the Board reason to suspect that he or she will continue the same dishonest acts after licensure or certification. If the Board is made aware of acts committed as a student, an investigation will be conducted once the student makes application for licensure or certification; or sooner if the student is already licensed or certified by the Board. The Board will consider the same factors as described above for lying and falsification within the practice of nursing or functioning as a nursing assistant.

Petition for Reconsideration or Reinstatement of License or Certificate

A person who has been denied licensure or certification, or whose license or certificate has been suspended or revoked has the right to petition the Board for reconsideration or reinstatement. The burden of proof that the person no longer poses a danger for deception, lying or falsification regarding patient care, recordkeeping related to nursing practice, or other acts of deception remains with the petitioner.

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The Oregon State Board of Nursing (OSBN) is authorized by Oregon Revised Statutes Chapter 678 to exercise general supervision over the practice of nursing in Oregon to include regulation of nursing licensure, education and practice in order to assure that the citizens of Oregon receive safe and effective care.

The OSBN further interprets statute and rule and issues opinions in the form of Board Policies, Policy Guidelines and Position Statements. Although they do not have the force and effect of law, these opinions are advisory in nature and issued as guidelines for safe nursing practice.