

Disciplinary Sanctions for Murder, Abuse and Neglect

The Oregon State Board of Nursing, in keeping with its mission to protect the public health, safety and welfare, believes it is imperative to take a strong position regarding the licensure and certification of individuals who engage in misconduct involving ending or attempting to end a patient's life, abuse and neglect towards patients or in the workplace, or who have been convicted of murder or other crimes involving harm towards a person, to an 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, 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. Patients* 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 are alone, providing care to a patient, whether in a healthcare facility or a homelike setting, without supervision of another healthcare provider.
4. A core tenet of nursing is "to do no harm" and to behave in a manner which preserves and protects the patient's health, safety and well being.
5. Patients place trust in the nurse/nursing assistant to safeguard him/her from any harm, including neglect or abuse, either from the nurse/nursing assistant or from any other person while the patient is in the nurse/nursing assistant's care.
6. Abuse includes physical, verbal or emotional acts towards a person which are intentional, intimidating, threatening or harassing.
7. Neglect includes carelessly allowing physical discomfort or injury to the patient.
8. Abuse or neglect of a patient in a single instance raises concerns whether the nurse/nursing assistant will engage in similar behavior towards patients in the future.
9. Abusive or neglectful behavior outside of the workplace, including conviction of a crime of abuse or neglect, may raise concerns as to whether the same misconduct will be repeated in the workplace and therefore place patients at risk for abuse or neglect.

*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 Murder, Abuse and Neglect

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

Conviction for murder, or a similar crime which results in the death or grave injury of any person is grounds for denial of initial application for licensure or certification, or revocation of a license or certificate. The length of time between the conviction and the application for licensure or certification is not a factor because of the violent nature of the crime, the core tenet of the nursing profession to preserve life, and lack of evidence regarding the effectiveness of treatment for the behavior which contributed to these crimes.

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Conviction for other crimes involving intentional mistreatment, abuse, neglect or intimidation of a vulnerable person, including the disabled, children or animals, are considered by the Board to be very serious and may disqualify an individual from initial or continued licensure or certification. Examples include, but are not limited to: Assault I & II, Criminal Mistreatment I & II, Kidnapping, Child Abandonment, Abuse of Corpse, and Animal Abuse.

Conviction for other crimes related to abuse and neglect will be considered on an individual basis in regards to the circumstances surrounding commission of the crime, lapse of time between commission of the crime and application for licensure or certification, a change in life circumstances, insight/remorse regarding the conduct, and other aggravating and mitigating factors. Nevertheless, the Board considers all convictions related to abuse and neglect to be serious and will thoroughly scrutinize the applicant for licensure or certification for the potential that abusive or neglectful conduct may be a risk in the provision of patient care.

Ending or Attempting to End a Patient's Life

Ending a patient's life is contradictory to the core tenet of nursing to preserve life and well being.

Ending a patient's life by discontinuing mechanical ventilation or other life support (unless there is a physician's order to do so), administering medication or by any other means is grounds for revocation of licensure/certification.

Attempting to end a patient's life by any means is considered by the Board to be as serious as terminating the life of a patient and is also grounds for revocation of licensure/certification.

A request from the patient or the patient's family and friends to terminate the patient's life does not mitigate the sanction of revocation.

Abuse or Neglect of Patients

Abuse or neglect of a patient is never acceptable under any circumstance. Physical abuse or neglect which is intentional, of a gross nature, or results in actual injury, may be grounds for discipline of the licensee or certificate holder, or grounds for denial for licensure or certification. In considering the level of disciplinary sanction which may include revocation of licensure or certification, the Board will weigh the seriousness of the event and consider the factors of the extent of the injury, whether or not treatment was required for the patient, environment and conditions of the workplace, and the individual's past work history in regards to treatment of patients.

The Board recognizes the stresses and frustrations inherent in caring for combative, confused, anxious, and demanding patients, or patients who are resistant to care. The Board also recognizes that, in some work settings there may be extraordinary demands on the licensee or certificate holder, as well as lack of resources. Combative and confused patients may strike out and physically harm the nurse/nursing assistant while the nurse/nursing assistant is attempting to give care. A reactive, self-protective gesture on the part of the nurse/nursing assistant is understandable, even though it may result in harm to the patient. In these circumstances the Board will consider the reflexive nature of the event, how quickly the nurse/nursing assistant reported the incident and took responsibility for its occurrence, level of insight, and ability to articulate alternative actions in the future as mitigating factors in deciding whether or not to take disciplinary action. A pattern of physical abuse, regardless of the nature of each incident, is grounds for disciplinary action from probation through revocation of the license or certificate.

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Verbal and emotional abuse is more difficult to objectively measure, but is serious due to the dependent nature of the nurse/nursing assistant-patient relationship. Single incidents of verbal or emotional abuse are serious but may not be grounds for disciplinary action. The Board will consider working conditions (staffing and other resources), workload, patient care demands, attitude, and acknowledgement of responsibility for the event. The Board will use the investigative process to assess the strengths and weaknesses of the nurse/nursing assistant, assist in problem solving alternative responses in the future, and counsel the nurse/nursing assistant regarding further complaints of a similar nature. The nurse/nursing assistant may receive a warning for the first incident of emotional or verbal abuse. A pattern of verbal or emotional abuse is grounds for discipline and will be considered on an individual basis, using the factors described above. If the nurse/nursing assistant has been previously warned, discipline will be progressive up to and including revocation of the license or certificate.

The Board believes that violation of patient rights is abuse and will be reviewed in a manner similar to the way verbal and emotional abuse is investigated.

The Board believes that employers of nurses/nursing assistants have the responsibility to safeguard patients from abuse and neglect. Employers also have the responsibility to assist nurses/nursing assistants to effectively manage confused, combative and uncooperative patients, while concurrently protecting patient rights. The employer has the right to impose disciplinary action according to facility policy despite the Board's decision regarding the licensee or certificate holder.

Abuse Between Co-Workers

The threat of harm or actual physical harm between co-workers may cause patients to fear that they will be physically harmed. Such incidents will be investigated and resolved as though the abuse or neglect occurred towards the patient. Factors of intent, the work environment, circumstances of the incident, and the outcome of patient care will be considered. The Board believes that most incidents of abuse between co-workers are employer-employee issues. However, repeated offenses, even those which do not negatively impact patient care, will be reviewed by the Board.

Petition for Reconsideration or Reinstatement of License or Certificate

An individual who has been denied licensure or certification, or whose license or certificate has been revoked, has the right to petition the Board for reconsideration or reinstatement. The burden of proof that the person does not pose a danger of abuse or neglect towards patients remains with the petitioner.

Adopted: September 1998

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