

Policy Brief: Evaluating Board of Nursing Discipline during the COVID-19 Pandemic

Purpose

To provide guidance to states and state boards of nursing (BONs) in determining whether nurses who have encumbered licenses can return to the workforce via waiving of the disciplinary action during the COVID-19 pandemic.

Context

- The role of the BON is to ensure public protection by allowing only nurses who are competent and safe to practice into the workforce (Raper & Hudspeth, 2008; Brous, 2012; Russell, 2017).
- The COVID-19 pandemic affects health care systems around the world, creating severe shortages of nurses in the U.S.
- In an effort to meet the demands, states are examining ways to expand the nursing workforce. Some states have issued waivers for nurses with inactive licenses to temporarily enter the workforce without meeting state requirements such as refresher courses. These include retired nurses as well as those who have placed their license on an inactive status for other reasons. The waivers generally apply only to nurses with unencumbered licenses.
- BONs, whose mission is to protect the public, are receiving requests from nurses with encumbered licenses to be included in the waiver and allowed to work during the crisis.
- Nurses who have encumbered licenses may be on probation, a suspension or had their licenses revoked. BONs do not issue these disciplinary actions without strong evidence that a nurse is incompetent and/or unsafe to practice (Raper & Hudspeth, 2008; Brous, 2012). In addition, some nurses voluntarily surrender their license in lieu of this type of discipline. Reasons for license probation, suspension, revocation or surrender, include but are not limited to: substance use disorder, misuse of substances, gross negligence and/or substandard care, repeated violations of the standards of care, fraudulent activity, abuse of a patient, etc. In addition, there are states that remove nurses from practice by suspending or revoking their license for administrative issues such as nonpayment of student loans, nonpayment of child support, alimony or taxes.

Considerations

In order to make recommendations for these difficult requests, the task force took the following into consideration:

1. To waive an individual licensee's discipline is a state decision.
2. General waivers of discipline will most likely require state legislative action or action by the governor.
3. Waiving discipline, in many states, may require reinstatement proceedings at a time when the states do not have time or the staff to do so. Some states have cancelled all administrative proceedings during the COVID-19 pandemic.
4. The pandemic presents particular challenges for individuals with a history of substance use disorder. Re-entry into the health care workforce at this time is highly stressful and may present additional challenges for licensees with a substance use disorder; consequently, it could be detrimental to their recovery (American Addiction Centers, n.d.; Brodsky, 2020; National Institute on Drug Abuse, 2020).

5. In addition, drug monitoring programs in many states are modifying or limiting drug screens during shelter-in-place periods required by some states during the pandemic.
6. There may be outstanding issues or legal consequences to reinstating licenses/waiving disciplinary terms following the end of the state of emergency.
7. Waiving a disciplinary action may impact more than one state. Nurses have extraordinary mobility during this time and can readily cross state borders due to laws or state declarations allowing nurses to cross borders during a declared emergency.
8. Employers rely heavily on the judgement of the BON to ensure that the individual they are employing does not present a risk to their patients. Therefore, caution needs to be exercised.

Recommendations

Thus, given these considerations and the dynamic needs of the pandemic, the Task Force recommends the following:

1. If the need arises, states could consider waiving disciplinary action for licensees who have been removed from practice due to administrative issues that have no nexus to public safety. These include nonpayment of student loans, child support, alimony or taxes.
2. All requests are at the discretion of the BON. It is up to each BON to determine how it wishes to address the requests including examining every request on a case-by-case basis. If BONs consider recommending waivers or other policy decisions, those decisions should be limited to the duration of the state of emergency within their state.
3. BONs should consider whether there may be legal consequences of those actions following the end of the state of emergency.
4. If necessity dictates, state BONs could adopt a uniform protocol to authorize certain modifications to disciplinary actions; for example, the early release of licensees who have completed substantially all of the terms of probationary actions, or early reinstatement of suspended licenses if the terms of reinstatement are substantially met.

Of crucial importance during this unprecedented time is safe and competent nursing care to protect the public, to help those affected by COVID-19 recover and to maintain the integrity of the nursing profession

References

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Endorsements

National Council of State Boards of Nursing

American Association of Colleges of Nursing

American Nurses Association

American Organization for Nursing Leadership

National League for Nursing



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