

STATUTE:

61-3-28. Disciplinary proceedings; judicial review; application of uniform licensing act; limitation.

A. In accordance with the procedures contained in the Uniform Licensing Act [61-1-1 NMSA 1978], the board may deny, revoke or suspend any license held or applied for under the Nursing Practice Act, reprimand or place a licensee on probation or deny, limit or revoke the multistate licensure privilege of a nurse desiring to practice or practicing professional registered nursing or licensed practical nursing as provided in the Nurse Licensure Compact [61-3-24.1 NMSA 1978] upon grounds that the licensee, applicant or nurse:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license or certificate of registration;

(2) is convicted of a felony;

(3) is unfit or incompetent;

(4) is intemperate or is addicted to the use of habit-forming drugs;

(5) is mentally incompetent;

(6) is guilty of unprofessional conduct as defined by the rules and regulations adopted by the board pursuant to the Nursing Practice Act;

(7) has willfully or repeatedly violated any provisions of the Nursing Practice Act, including any rule or regulation adopted by the board pursuant to that act; or

(8) was licensed to practice nursing in any jurisdiction, territory or possession of the United States or another country and was the subject of disciplinary action as a licensee for acts similar to acts described in this subsection. A certified copy of the record of the jurisdiction, territory or possession of the United States or another country taking the disciplinary action is conclusive evidence of the action.

B. Disciplinary proceedings may be instituted by any person, shall be by complaint and shall conform with the provisions of the Uniform Licensing Act [61-1-1 NMSA 1978]. Any party to the hearing may obtain a copy of the hearing record upon payment of costs for the copy.

C. Any person filing a complaint shall be immune from liability arising out of civil action if the complaint is filed in good faith and without actual malice.

D. The board shall not initiate a disciplinary action more than two years after the date that it receives a complaint.

E. The time limitation contained in Subsection D of this section shall not be tolled by any civil or criminal litigation in which the licensee or applicant is a party, arising substantially from the same facts, conduct, transactions or occurrences that would be the basis for the board's disciplinary action.

F. The board may recover the costs associated with the investigation and disposition of a disciplinary proceeding from the nurse who is the subject of the proceeding if the

nurse is practicing professional registered nursing or licensed practical nursing pursuant to a multistate licensure privilege as provided in the Nurse Licensure Compact.

61-3-29. Exceptions.

The Nursing Practice Act shall not apply to or affect:

- A. gratuitous nursing by friends or members of the family;
- B. nursing assistance in case of emergencies;
- C. nursing by students when enrolled in approved schools of nursing or approved courses for the education of professional or practical nurses when such nursing is part of the educational program;
- D. nursing in this state by a nurse licensed in another state whose employment requires the nurse to transport a patient or who is a camp nurse who accompanies and cares for a patient temporarily residing in this state if the nurse's practice in this state does not exceed three months and the nurse does not claim to be licensed in this state;
- E. nursing in this state by a person employed by the United States government, while in the discharge of the person's official duties;
- F. the practice of midwifery by a person other than a registered nurse who is certified or licensed in this state to practice midwifery;
- G. a person working as a home health aide, unless performing acts defined as professional nursing or practical nursing pursuant to the Nursing Practice Act;
- H. a nursing aide or orderly, unless performing acts defined as professional nursing or practical nursing pursuant to the Nursing Practice Act;
- I. a registered nurse holding a current license in another jurisdiction who is enrolled in a professional course requiring nursing practice as a part of the educational program; or
- J. performance by a personal care provider in a noninstitutional setting of bowel and bladder assistance for an individual whom a health care provider certifies is stable, not currently in need of medical care and able to communicate and assess the individual's own needs.

RULES:

16.12.1.9 DISCIPLINARY ACTION:

A. Authority of board of nursing: The board may deny, revoke, or suspend any license or certificate held or applied for under the NPA, or reprimand or place a license or certificate on probation on the grounds stated in Section 61-3-28 NMSA, 1978.

B. Disciplinary philosophy: the board of nursing accepts its mandate to regulate nursing, medication aides and hemodialysis technicians for the protection of the citizens of New Mexico. In its role as a regulatory body, the board recognizes that it is responsible for conducting hearings upon charges related to violations of the Nursing Practice Act, Section 61-3-1 through 61-3-30 NMSA, 1978 or its rules, and to take disciplinary actions against licensees or certificate holders who violate the statute or rules. The

board considers all alleged violations based on the merits of each case and the potential danger to the public. The board will consider remedial measures of corrective action rather than denial, suspension or revocation of a license or certificate except in cases where there is a real or potential danger to the public. The board will deny, suspend or revoke a license or certificate when it has evidence that the public's health, safety and welfare may be in danger. The board is responsible for promoting, preserving and protecting the public health, safety and welfare through the adoption of rules that allow licensees and certificate holders to function safely and competently within the parameters of their license/certificate. The board is also responsible for ensuring that licensees and certificate holders have access to the laws and rules governing nursing in order that they may function within the legal boundaries of the nursing practice act and its rules.

C. Grounds for action.

(1) For purposes of Section 61-3-28 (A) (3) NMSA 1978, supra, "incompetence" is defined as follows: In performing nursing functions, whether direct patient care or the administration/management of that care, a nurse is under a legal duty to possess and to apply the knowledge, skill and care that is ordinarily possessed and exercised by other nurses of the same licensure status and required by the generally accepted standards, of the profession including those standards set forth in 16.12.2.12 NMAC of these rules. The failure to possess or to apply to a substantial degree such knowledge, skill and care constitutes incompetence for purposes of disciplinary proceedings. Charges of incompetence may be based on a single act of incompetence or on a course of conduct or series of acts or omissions, which extend over a period of time and which, taken as a whole, demonstrates incompetence. It shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions, so long as the conduct is of such a character that harm could have resulted to the patient/client or to the public from the act or omission or series of acts or omissions.

(2) For the purpose of Section 61-3-28 (A) (6) NMSA, 1978, supra, "unprofessional conduct" includes, but is not limited to, the following:

- (a) dissemination of a patient/client's health information or treatment plan acquired during the course of employment to individuals not entitled to such information and where such information is protected by law or hospital/agency policy from disclosure;
- (b) falsifying or altering patient/client records or personnel records for the purpose of reflecting incorrect or incomplete information;
- (c) misappropriation of money, drugs or property;
- (d) obtaining or attempting to obtain any fee for patient/client services for one's self or for another through fraud, misrepresentation, or deceit;
- (e) aiding, abetting, assisting or hiring an individual to violate the nursing practice act or duly promulgated rules of the board of nursing;
- (f) obtaining, or attempting to obtain possessing, administering or furnishing prescription drugs to any person, including but not limited to one's self, except as directed by a person authorized by law to prescribe;
- (g) failure to follow established procedure and documentation regarding controlled substances;
- (h) failure to make or keep accurate, intelligible entries in records as required by law, policy and standards for the practice of nursing;
- (i) obtaining or attempting to obtain a license to practice nursing for one's self or for another through fraud, deceit, misrepresentation or any other act of dishonesty in any phase of the licensure by examination or endorsement process, or relicensure process;
- (j) practicing nursing in New Mexico without a valid, current New Mexico license or permit, or aiding, abetting or assisting another to practice nursing without a valid, current New Mexico license;
- (k) failure to report a nurse(s) who is suspected of violating the New Mexico Nursing Practice Act or rules;
- (l) intentionally engaging in sexual contact with or toward a patient/client in a manner that is commonly recognized as outside the scope of the individual nurse's practice;
- (m) abandonment;
- (n) engaging in the practice of nursing when judgment or physical ability is impaired by alcohol or drugs or controlled substances;
- (o) committing acts which constitute grounds for disciplinary action pursuant to Section 61-3-28 (A) (1), (2) NMSA, 1978--where the conviction arises from employment as a nurse,

(3),(4)--where the intemperance, addiction, incompetence or unfitness has manifested itself during the course of employment as a nurse in a fashion which is contrary to the provision of good health care, (5)--where the mental incompetence has manifested itself during the course of employment as a nurse in a fashion which is contrary to the provisions of good health care, and (7);

(p) failure to follow state and federal laws, policies and procedures for the prescription and distribution of dangerous drugs including controlled substances;

(q) practice which is beyond the scope of licensure;

(r) inappropriate delegation of medication administration, evaluation and nursing judgment to non-licensed persons;

(s) verbally or physically abusing a patient/client;

(t) failure to maintain appropriate professional boundaries which may cause harm to the patient.