Nursing Discipline, Conduct Reporting and Protocols

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LLR and Nursing

LLR and the State Board of Nursing are creatures of statute.

- § 40-1-40 established LLR as a cabinet agency in 1996.
- The purpose of the agency is protecting the public “through the regulation of professional and occupational licensees and the administration of boards charged with the regulation of the professional and occupational practitioners.”
State Board of Nursing

- §40-33-10 defines the composition and powers and duties of the BON:
  - There are 11 members:
    - 2 LPNs and 2 lay members from the State at large
    - 7 registered nurses, each representing one congressional district, and at least one must be employed in a hospital setting and at least one must be licensed as an advanced practice registered nurse.
    - Registered nurse and licensed practical nurse members must be licensed in South Carolina, must be employed in nursing, must have at least three years of practice in their respective professions immediately preceding their appointment, and shall reside in the district they represent.
    - Lay members must not be licensed or employed as a health care provider but shall represent the public at large as a consumer of nurse services.
    - No member may serve as an officer of a professional health related state association.
    - The chairman or designee of the State Board of Medical Examiners shall serve as an advisory nonvoting member to the board to provide consultation on matters requested by the Board of Nursing.
State Board of Nursing

- All members are appointed by the Governor, with the advice and consent of the Senate:
  - President: Carol Ann Moody, 4th District
  - Vice-President: Samuel H. McNutt, 5th District
  - Secretary: Amanda Eubanks Baker, 2nd District
  - Member: Kay Swisher, 3rd District
  - Member: Karen Racz Hazzard, 7th District
  - Public Member: Dr. James Mallory
  - Public Member: Dr. Anne Smoak Crook
  - Vacancies:
    - 1st Congressional District, Registered Nurse Member
    - 6th Congressional District, Registered Nurse Member
    - At Large, Licensed Practical Nurse Member
    - At Large, Licensed Practical Nurse Member
Some Duties of State Board of Nursing

- Publish advisory opinions and position statements
- Develop minimum standards for initial licensure and continued competency
- Survey educational enrollments
- Conduct investigations and hearings
- Develop minimal standards for nursing education programs
- Approve nursing education programs
- Establish fees
- Establish guidelines to assist employers
WHO DO WE REGULATE?

- Total RNs: 55,792
- Total LPNs: 11,873
- Total APRN: 4,616
  - NP: 2,840
  - RX: 2,562
  - CRNA: 1,570
  - CNM: 103
  - CNS: 103
- Total Licensees: 72,281
A complaint is received by LLR.
BON complaints do not require an affidavit.

- All complaints are evaluated by a complaint analyst.
  - If no jurisdiction or no merit, no file is opened.
  - If the allegations may constitute a violation, the matter is referred to OIE.

In OIE, the case is assigned to an investigator.

- Upon conclusion of the investigation, the assigned investigator presents the case to the IRC (professional member, administrator, prosecuting attorneys, investigator and responsible supervisor). The IRC may recommend a letter of caution, dismissal or a formal complaint.

- The IRC’s recommendations are presented to the BON for action. The cases are presented anonymously and in a closed session. The BON may accept or reject the IRC’s recommendations based upon a neutral statement of the issues presented and the IRC’s logic.
The Complaint Process Cont.

BON approves issuance of a Formal Complaint.

Respondent is unwilling to negotiate with ODC and proceeds with a formal hearing after responding to the Formal Complaint.

ODC presents the case to a hearing panel of three professional members who have been selected by the BON.

The hearing panel makes a recommendation to the BON. The recommendation is presented to the BON for final action at the next BON meeting.

ODC negotiates with Respondent, based upon parameters established by the BON.

ODC presents a Consent Agreement to the BON President OR a Memorandum of Agreement to the full BON.

www.llronline.com
Office of Investigations and Enforcement

All LLR investigators received national certification from the Council on Licensure, Enforcement and Regulation (CLEAR) after undergoing training in November 2013.
Office of Investigations and Enforcement

• Under former Director Pisarik’s administration, OIE implemented cycle times for all Boards.
• The cycle time for OIE for BON cases is 120 days.
### Types of BON Complaints Closed in 2014

<table>
<thead>
<tr>
<th>Category</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unknown</td>
<td>4</td>
</tr>
<tr>
<td>No Issue Found</td>
<td>6</td>
</tr>
<tr>
<td>Alcohol &amp; Other Substance Abuse</td>
<td>44</td>
</tr>
<tr>
<td>Non-Compliant</td>
<td>13</td>
</tr>
<tr>
<td>Compliance/Licensure Review</td>
<td>1</td>
</tr>
<tr>
<td>Other (Not Classified)</td>
<td>1</td>
</tr>
<tr>
<td>Criminal Conviction</td>
<td>7</td>
</tr>
<tr>
<td>Patient Neglect/Abandonment</td>
<td>14</td>
</tr>
<tr>
<td>Documentation Errors</td>
<td>31</td>
</tr>
<tr>
<td>Practicing Outside Scope of Practice</td>
<td>33</td>
</tr>
<tr>
<td>Drug Violation</td>
<td>102</td>
</tr>
<tr>
<td>Practicing Under Influence</td>
<td>14</td>
</tr>
<tr>
<td>Ethics Violation</td>
<td>1</td>
</tr>
<tr>
<td>Prescription Fraud</td>
<td>18</td>
</tr>
<tr>
<td>Failure to Take Corrective Action</td>
<td>4</td>
</tr>
<tr>
<td>Sanctioned by Other Board</td>
<td>8</td>
</tr>
<tr>
<td>Fraud (Unspecified)</td>
<td>2</td>
</tr>
<tr>
<td>Sub-Standard Patient Care</td>
<td>48</td>
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<tr>
<td>Fraud in Obtaining License</td>
<td>4</td>
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<tr>
<td>Unlicensed Practice</td>
<td>14</td>
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<tr>
<td>Incompetence</td>
<td>8</td>
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<tr>
<td>Unprofessional Conduct</td>
<td>85</td>
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<tr>
<td>Medication Errors</td>
<td>9</td>
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<tr>
<td>Unresolved Investigation</td>
<td>1</td>
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<tr>
<td>Misconduct</td>
<td>3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>475</strong></td>
</tr>
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2014 Failure to Report Cases

- In 2014, LLR closed 4 investigations arising from an employer’s failure to report misconduct.
- There are 11 active investigations arising from an employer’s failure to report misconduct in 2014.
Conduct Reporting

• § 40-33-111 provides:
  (A) An employer, including an agency, or supervisor of nurses, shall report any instances of the misconduct or the incapacities described in Section 40-33-110 to the State Board of Nursing not more than fifteen business days, excepting Saturdays, Sundays, and legal holidays, from the discovery of the misconduct or incapacity. A nurse supervisor who fails to timely report the misconduct or incapacity may be subject to disciplinary action and civil sanctions as provided for in Section 40-33-120. An employer who is not licensed by the board and who fails to timely report the misconduct or incapacity shall pay a civil penalty of one thousand dollars per violation upon notice of the board.

  (B) The findings of the board, including the amount of the fine, are final unless within thirty days after receipt of their notice the employer submits a request in writing to the board for a review of the findings or the amount of the fine. If a request for review is made to the board, a final determination must be made after an opportunity for a hearing pursuant to the Administrative Procedures Act.
Interpreting § 40-33-111

• At its November 2014 meeting, the BON clarified that, regardless of the source of information and regardless of the status of an internal investigation, an employer has 15 business days from when the complaint of alleged misconduct or incapacity arises to report the matter to the BON.
Disciplinary Action by an Employer

• At its November 2014 meeting the BON was asked to clarify the question on its renewal application which asks the applicant whether he or she has “received disciplinary action by any employer for your job performance involving patient care or safety.”

• The BON interprets “discipline” as “to mean to punish someone as a way of making sure that rules or orders are obeyed.”
Disciplinary Action by an Employer

• The BON further stated:
  “Whether a licensee has been subjected to disciplinary action by an employer is a subjective analysis for which the BON cannot provide interpretative guidance. It is imperative that employers and nurses within their employ communicate clearly with one another whether a specific employment action constitutes disciplinary action for job performance involving patient care or safety.”
APRN Protocols

• § 40-33-34 (D)(1) governs the content of written protocols between physicians and nurse practitioners, certified nurse midwives or clinical nurse specialists. (CRNAs are required to execute written guidelines.)

• The original protocol and any amendments must be reviewed at least annually, dated and signed by the nurse and physician, and made available to the BON within 72 hours of request.
APRN Protocols

• Failure to produce protocols upon request of the BON is considered misconduct and subjects the licensee to disciplinary action.

• A random audit of approved written protocols must be conducted by the BON at least biennially.
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Questions?
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