

# LPN Voluntarily Surrenders License Due to Unprofessional Conduct

## Avoiding Liability Bulletin - February 2015

It is a well-known fact that boards of nursing have the authority to discipline a nurse when his or her conduct violates the applicable state nurse practice act and/or rules. In the past, violations of the act and/or rules most often involved a breach that related directly to the practice of nursing. Examples include an injury to a patient, crossing professional nurse-patient boundaries, nursing care that did not meet acceptable standards of practice, and unprofessional or unethical conduct when providing nursing care (e.g., falsification of patient documents).

Recently, boards of nursing are evaluating unprofessional or unethical conduct that is not confined to the nurse licensee's professional practice. In Wyoming in 2010, the Wyoming State Board of nursing filed a Notice of Complaint against a Licensed Practical Nurse (LPN) for a self-disclosed DUI conviction on her renewal application<sup>1</sup>.

The LPN, in addition to self-reporting this conviction, also attached court records documenting the criminal matter, and a personal statement which acknowledged the criminal offense and the follow-up treatment for issues with alcohol abuse.

Other documents that were submitted by the LPN to the board included a clinical substance abuse evaluation which indicated that the LPN did indeed meet the DSM-IV diagnostic criteria of Alcohol Abuse and that after further evaluation, the LPN participated in residential treatment successfully, fully complied with its requirements (e.g., individual counseling, 12 step meetings), undertook outpatient treatment, successfully completed that treatment, and was still undergoing the treatment when the board filed its Notice<sup>2</sup>.

All of this rehabilitation was completed, but for the outpatient therapy, prior to the board's filing its Notice against the LPN. The board asked for "further evaluations" recommended by the prior treatment programs in order to update her progress.

The board provided a second notice of its proposed disciplinary action, including the recommendations required and the mandate that the LPN enter Wyoming's Nurse Monitoring Program.<sup>3</sup> The LPN refused to follow through with the board's request. The Board then filed a formal petition and complaint and scheduled a contested case hearing.

The LPN then requested that she voluntarily surrender her license in lieu of proceeding to a contested case hearing.

The board, in considering her request, cited several violations of the Wyoming Nurse Practice Act

due to the LPN's conduct, and if established by "clear and convincing evidence" at a hearing would constitute a violations of unprofessional conduct, failure to conform to prevailing standards of nursing practice, and a guilty plea relating adversely to the practice of nursing.<sup>4</sup>

The board decided that an appropriate alternative to initiating formal disciplinary proceedings was to accept the voluntary surrender of the LPN's license.

In accepting the voluntary surrender of the LPN's license, the board carefully reviewed the Wyoming Nurse Practice Act's section governing grounds for discipline. A conviction due to "... a felony or a misdemeanor that "relates adversely to the practice of nursing or to the ability to practice nursing....; Engaging in any act inconsistent with uniform and reasonable standards of nursing practice , including but not limited to: unprofessional conduct,...impairment.....chemical or alcohol impairment/abuse"; Is unfit or incompetent to practice nursing by.....use of drugs, narcotics, chemicals or any other mind-altering material; [.]<sup>5</sup>

This case has clear implications. As an LPN, you must:

1. Know and understand the Nurse Practice Act's requirements for LPNs (or in a separate LPN Nurse Practice Act, if applicable) relating to grounds for discipline, including the specifics of unprofessional conduct, chemical use/abuse, and standards of LPN practice;
2. Understand that unprofessional or unethical conduct can be applied to conduct external to directly caring for patients and LPN practice generally;
3. Notify your professional liability insurance agent as soon as you are aware a disciplinary action may be taken against you so you can obtain legal representation when allegations of violations are raised against you by a board of nursing;
4. Retain a nurse attorney or attorney to represent you if you do not have professional liability insurance;
5. Keep up to date with case law and board of nursing decisions concerning unprofessional conduct by LPNs in your state;
6. Learn more about unprofessional conduct and nursing ethics, including any ethical codes published by your professional LPN associations; and
7. Never place yourself in a situation that might be potentially regarded as unprofessional and/or unethical conduct by your board of nursing.

## **FOOTNOTES**

1. Settlement Agreement, Stipulation and Order for Voluntary Surrender, IN THE DISCIPLINARY MATTER OF HEATHER WEBER, LICENSED PRACTICAL NURSE, LICENSE NUMBER LPN 6207, DOCKET NUMBER 10-30-MATRIX, BEFORE THE WYOMING STATE BOARD OF NURSING.

2. Id. , 1-2.

3. Id. , 2.

4. Id. , 3.

5. Id. , 4.

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