

What are State-Based First Offender Programs?

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Many states have passed criminal laws called First Offender Programs that can be very helpful to you as a nurse. If you have been charged with a probational felony, such as prescription fraud or possession of a controlled substance, and have a substance use disorder, the program provides certain benefits that would not otherwise be available to a nurse charged with such crimes.

Although the programs vary from state to state, their basic approach is to get the nurse the needed treatment for the substance use disorder, avoid jail or prison time, and allow the nurse to retain his or her function and role in society.¹

In order to be eligible for such a program, the nurse cannot have a previous felony conviction and cannot have been placed on probation or granted a conditional discharge for any felony offense.

If eligible and the nurse enters the program, all judicial proceedings are halted until the nurse completes the program. The components of a program usually include drug screens, medical treatment, and psychiatric treatment or rehabilitation, participation in which is mandatory. Most programs are about a year in length.

When the program is successfully completed, the nurse is discharged from the program and the criminal charges against the nurse are dismissed.

This outcome is helpful to the nurse because there is no conviction for a criminal offense and the nurse has received necessary treatment. As a result, any disciplinary action by a state board of nursing would not be based on a conviction of a felony but rather on a basis that violated another disciplinary provision of the state nurse practice act, such as unprofessional conduct.

It is important to note that first offender programs can only be used once by the nurse. And, it is not automatically applied. Rather, the nurse, through his or her attorney, must request the client's participation in the program. The judge presiding over the criminal case determines if participation is granted after reviewing all the circumstances surrounding the case.²

If you are charged with a criminal drug offense, it is essential that you retain an attorney or nurse attorney to represent you in those proceedings. It would be unwise to handle the matter yourself. And, if granted participation in a first offender program, adhere to its mandates and successfully complete the plan.

The next step would then answer to any allegations by your board of nursing of a violation of the nurse practice act. Here again, it is essential to retain an attorney or nurse attorney to represent you. Your attorney can help present your case in as positive a manner as possible, with an

emphasis on the successful completion of the first offender program.

The board may want you to continue with aftercare for your substance use disorder so that a possible relapse is avoided. For example, the board would allow you to return to nursing practice but request that you take part in random drug screens, attend group meetings with other nurses in aftercare run by an acceptable out-patient agency or facility, and have you send to the board periodic reports about where you are working, how your nursing practice is going, and so forth.

If you sincerely and successfully work through a first offender program and present your case before the board of nursing in an honest manner, taking responsibility for what has occurred and what you have accomplished, the result is truly a win-win for you and for the safety those to whom you provide care.

FOOTNOTES

1. Ken LaMance (2015), "First Offender Program Lawyers", at:<http://www.legalmatch.com/law-library/articles/first-offender-program-lawyers.html> .
2. *Id.*

GENERAL REFERENCE

Janet Portman (n.d.), "First Offender Programs: Those Who Haven't Been In Too Much Trouble

With The Law But Are Facing Charges May Be Able To Avoid Conviction”, at www.nolo.com/legal-encyclopedia/first-offender-program.htm/ .

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