



Disciplinary Sanctions for Sexual Misconduct

The Texas Board of Nursing (Board), in keeping with its mission to protect the public health, safety, and welfare, believes it is important to take a strong position regarding the licensure of individuals who engage in sexual misconduct towards patients or former patients in the workplace, who have been convicted of or put on probation for sexual misconduct, or whose sexual misconduct outside the workplace may affect the ability to safely care for patients.

The Board's position applies to all nurse license holders and applicants for licensure.

The Board adopts the following assumptions as the basis for its position:

1. Patients* under the care of a nurse are vulnerable by virtue of illness or injury, and the dependent nature of the nurse-patient relationship.
2. Persons who are especially vulnerable include the elderly, children, the mentally ill, sedated and anesthetized patients, those whose mental or cognitive ability is compromised and patients who are disabled or immobilized.
3. Nurses are frequently in situations where they provide intimate care to patients or have contact with partially clothed or fully undressed patients. Nurses may also care for these patients without direct supervision.
4. Nurses are in the position to have access to privileged information and opportunity to exploit patient vulnerability.
5. There are appropriate boundaries in the nurse-patient relationship that nurses must clearly understand and be trusted not to cross.
6. A nurse's duty to maintain boundaries extends beyond a patient's discharge from nursing care, especially when it pertains to confidential medical records.
7. Sexual misconduct towards patients or in the workplace raises serious questions regarding the individual's ability to provide safe, competent care to vulnerable patients.
8. Sexual misconduct that occurs outside of the workplace, including conviction or deferred adjudication of or probation for a crime, may raise questions as to whether that same misconduct will be repeated in the workplace and therefore affects the ability of the nurse to safely provide patient care.

* The terms "resident" or "client" are often substituted for the term "patient" in health care facilities. For the purposes of this document "patient" includes all of these terms.

Crimes Related to Sexual Misconduct

The Board may rely solely on the conviction or deferred adjudication of a crime or probation for a crime, with or without an adjudication of guilt, to limit, deny, suspend, or revoke a license.

Sexual misconduct is a crime of moral turpitude. Crimes of sexual misconduct that involve abuse of a minor or a vulnerable person or taking advantage of another person are extremely serious grounds for denial of an initial application for licensure or revocation of the license. The length of time between the conviction and the application for licensure is not a factor due to the high recidivism rate for sex offenders, lack of empirical evidence regarding the success of treatment, and the fact that many victims do not report that a sexual offense has been committed against them. Crimes that disqualify an individual for licensure include Rape, Sodomy, Sexual Abuse, Contributing to the Sexual Delinquency of a Minor and other crimes related to children. Effective September 1, 2005, Texas Occupations Code § 301.4535 requires suspension, revocation, or refusal of a license for initial convictions of certain offenses. The sexually-related offenses are as follows: sexual assault, aggravated sexual assault, indecency with a child, and any offense a defendant is required to register as a sex offender under chapter 62, Texas Code of Criminal Procedure. This includes offenses of a similar nature in other jurisdictions. Once a final conviction or a plea of guilty or nolo contendere is entered, eligibility for licensure is not available until five years after successful completion and dismissal from community supervision or parole.

There are other sexual misconduct crimes that do not involve children or taking advantage of another person. There are also crimes that involve conduct between consenting adults. These crimes are considered by the Board to be of a serious nature but not necessarily a disqualification for licensure. Conviction or deferred adjudication of these crimes will be considered on an individual basis with regard to the circumstances surrounding the crime and may involve a forensic psychological evaluation with a sexual predator component - the sex MMPI, as well as a polygraph. This evaluation is to be performed by a Board approved psychologist or psychiatrist with forensic credentials who has expertise in evaluating sexual offenders.

Finally, it should be noted that if a nurse is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision for a crime involving sexual misconduct, the Board shall revoke the nurse's license, regardless of the conduct associated with or the circumstances surrounding the crime. Chapter 53 of the Texas Occupations Code and 22 Texas Administrative Code § 213.28 governs the consequences of criminal convictions and requires revocation of a nurse's license if there is imprisonment as stated above. Section 213.27 of 22 Texas Administrative Code is also applicable to criminal conduct.

Sexual Misconduct Toward Patients

Sexual misconduct toward patients is never acceptable. Conduct such as rape, sex disguised as treatment (unnecessary or prolonged pelvic/breast/genital exams or touching intimate body parts when the touch is not necessary for care) and "sneaky sex" (surreptitious touch, voyeurism, or exposing the patient's body when not necessary) are grounds for limitation, denial, or revocation of licensure. Nurses should never engage in conduct with a patient that is sexual or may reasonably be interpreted as sexual or in any behavior that is seductive or sexually demeaning to a patient, or engaging in sexual exploitation of a patient or former patient. Even if a patient initiates the sexual contact, a sexual relationship is still considered sexual misconduct for the nurse. The nurse should

never use the patient to satisfy the nurse's need for personal amusement, gratification, power, control, sexual stimulation or satisfaction. It is always the responsibility of the nurse to establish appropriate boundaries with present and former patients. Other sexual misconduct such as sexual harassment of a patient, verbal interaction of a sexual nature, or a romantic-like relationship with a patient are unacceptable but not necessarily a disqualification from licensure. These cases will be considered on an individual basis and may be disciplined at the level of a Reprimand or Warning following a thorough investigation.

Some factors to be considered are the length of time between the nurse-patient relationship and the personal relationship, the nature of the therapy the patient received, the nature of the knowledge the nurse has had access to and how will that affect the future relationship, whether the patient, or the former patient, will need therapy in the future, and the risk to the patient. Subsequent conduct of a similar nature indicates a pattern and may require revocation. The Board believes that employers of nurses have a responsibility to discourage this conduct and take measures to ensure that patients are not subjected to this conduct.

Consensual sex between a nurse whose relationship or past relationship with the patient is that of a mental health therapist is serious and not acceptable to the Board. The nature of the therapist nurse-patient relationship places the patient, or former patient, in a vulnerable position and raises the question of ability for true consensual sex on the part of the patient. This conduct is grounds for limitation, denial, or revocation of licensure. Consensual sex between a nurse and a former patient often involves exploitation by the nurse of the former patient's vulnerability and may be evidence of violations of appropriate nursing boundaries. Some factors to be considered are the length of time between the nurse-patient relationship and the personal relationship, the nature of the therapy the patient received, the nature of the knowledge the nurse has had access to and how will that affect the future relationship, whether the patient or the former patient will need therapy in the future, and the risk to the patient.

Sexual Misconduct in the Workplace - Not Toward Patients

The Board's mission is protection of the public. The Board is not charged with protecting nurses, and therefore, believes that sexual misconduct in the workplace is the responsibility of the employer. If sexual misconduct in the workplace occurs in view or hearing of a patient or may affect the patient's care or feeling of safety, the Board believes this conduct should be treated the same as similar conduct towards a patient as described above. However, should any conduct lead to a criminal charge, conviction, or deferred judicial action, the Board should be notified.

Petition for Declaratory Order, Reconsideration, or Reinstatement of License

An individual who has been denied licensure or whose license has been revoked has the right to petition the Board for reconsideration of the Board's decision to deny or revoke the license. The burden of proof that the individual no longer poses a risk to the health, safety, and welfare remains with the petitioner. At a minimum, the petitioner must show evidence

of successfully completing treatment specific to sexual misconduct. Additionally, the petitioner may be denied licensure without submitting a current forensic evaluation that addresses risk for re-offense, and includes recommendations on limitations in practice, patient population cared for, work setting and other issues related to the problem which originally brought the individual to the Board's attention. A polygraph exam may be included as part of the evaluation. The evaluator must be a health care professional whose credentials and expertise are approved by the Board. The recommended disciplinary or eligibility determination by the Board for sexual misconduct may be revocation or denial of licensure.

(Portions of this policy adapted from the Oregon Board of Nursing Policy, 1999, with additions, modifications, and/or deletions).

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