

Consideration of Staff Request for the Board to Issue a Charge to the Eligibility and Disciplinary Advisory Committee to Review and Make Recommendations Regarding the Board's Disciplinary Matrix, Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or Other Substance Use Disorder, Disciplinary Guidelines for Criminal Conduct; Rules 213.27, 213.28, 213.29, 213.30, and 213.33, and Probationary Stipulations

Summary of Request:

Consider request to issue a charge to the Eligibility and Disciplinary Advisory Committee to review and make recommendations regarding the Board's Disciplinary Matrix; *Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or Other Substance Use Disorder; Disciplinary Guidelines for Criminal Conduct*, Rules 213.27-213.30 and 213.33, and Probationary Stipulations.

Background:

The Board's current eligibility and disciplinary policies and rules, as referenced above, are designed to allow the Board to address such issues in a fair and consistent manner. However, as the Board's volume of complaints continues to grow, and as the rationale for and the application of Board policies and rules are questioned more frequently by outside parties, staff has identified areas which may need to be reviewed. In some situations, current Board policies and rules do not adequately or specifically address certain eligibility and disciplinary issues. In other situations, the application of the current Board policies and rules may not result in fair or appropriate outcomes. Some of these issues may have been reviewed by the Eligibility and Disciplinary Advisory Committee previously, but Staff recommends that these issues be reviewed again, in depth. Some issues that may require additional discussion and analysis include, but are not limited to:

Chemical Dependency/Substance Abuse

- Does participation in an alternative chemical dependency program, such as enrollment in a methadone treatment program, constitute sobriety and/or treatment under Board policy and rule? If so, should the Board adopt minimal standards that such programs must meet in order to qualify as acceptable sobriety and/or treatment? What should those standards be?
- Should the disciplinary process be different in substance abuse cases when there is no diagnosis of chemical dependency?
- When should a nurse be allowed to return to practice if she/he has a chemical dependency issue? Upon completion of 12 months of sobriety? Upon enrollment into a treatment program? Upon a recommendation from the nurses' treating counselor, doctor, or psychologist? Should individualized factors be considered before determining a nurse's return to practice?

- Should the Board consider allowing other types of drug screening methods, such as hair follicle testing?
- Should a nurse with a prior substance abuse issue (narcotics, controlled substances), but with no history of alcohol abuse or dependence still be required to abstain from alcohol while under a Board order?
- Is there a difference between a diagnosis of chemical dependency and a diagnosis of chemical abuse? If so, should Board policies and rules account for this difference?
- How are other states treating these types of issues? Are there 'best practices' regarding these types of issues that the Board should consider?

Mental Health/Chronic or Intractable Pain

- Should nurses who take prescription narcotics for chronic/intractable pain be disciplined? If so, should they be treated the same as nurses who have positive drug screens? If not, what should the standards be with regard to these nurses?
- Should nurses with a mental health issue or a physical illness be considered under the disciplinary rules and policies? Should separate rules or policies be created to address debilitating physical illnesses or mental health issues?
- How are other states treating these types of issues? Are there 'best practices' regarding these types of issues that the Board should consider?

Standard Stipulations

- Do current Board stipulations related to supervised practice need to be more flexible to allow supervision to be modified? Should there be additional flexibility depending on individualized factors? If so, what factors should be considered?
- Should stipulations be created that relate more closely to criminal history cases? Are the current stipulations, such as supervised practice or employer reporting sufficient or appropriate in cases where a nurse has a criminal background or is on probation for a prior criminal offense, but has no practice violations or chemical dependency issues? In these cases, when is it appropriate to impose supervision stipulations?
- Should persons other than a nurse, such as a physician, be allowed to provide supervision for a nurse under a Board order? If so, in what cases would this alternative option be appropriate?
- How are other states treating these types of issues? Are there 'best practices' regarding these types of issues that the Board should consider?

Criminal History

- Do the crimes described in Rule 213.28 relate closely enough to the practice of nursing to affect the eligibility or discipline of a nurse? Should crimes that only occur in non practice-settings, such as family violence, still be treated as relating to the practice of nursing?

- How are other states treating these types of issues? Are there ‘best practices’ regarding these types of issues that the Board should consider?

General Disciplinary Matters

- Should the Disciplinary Matrix be reviewed, updated, or amended? Should the Matrix include additional mitigating or aggravating factors?
- Should the request to include a polygraph with an evaluation be re-evaluated? Should such requests be limited to certain types of alleged violations?
- How are other states treating these types of issues? Are there ‘best practices’ regarding these types of issues that the Board should consider?

A review of the Board’s Eligibility and Disciplinary policies and rules, including, but not limited to the Board’s *Disciplinary Matrix and Guidelines For Criminal Conduct*, probationary stipulations in Agreed Orders, the Board’s *Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or Other Substance Use Disorder*, current rules related to good professional character, licensure of persons with criminal offenses, criteria and procedure regarding intemperate use and lack of fitness in eligibility and disciplinary matters, and factors considered for the imposition of penalties, sanctions, and fines, may help identify best practices, ensure consistency among states, provide appropriate flexibility, and result in a clearer and fairer resolution of the above referenced types of issues.

Pros and Cons:

Pros:

A study of the Board’s current eligibility and disciplinary policies by the Eligibility and Disciplinary Advisory Committee and the Committee’s recommendations, including, but not limited to, amending or adopting new rules or policies, will provide direction for the Board when determining the method of address for certain eligibility and disciplinary issues.

Cons:

None anticipated.

Staff Recommendations:

Move to issue a charge to the Eligibility and Disciplinary Advisory Committee to review and make recommendations regarding the Board’s current eligibility and disciplinary policies and rules, including, but not limited to:

- Review of the Board’s Disciplinary Matrix, *Eligibility and Disciplinary Sanctions for Nurses with Substance Abuse, Misuse, Substance Dependency, or Other Substance Use Disorder*, *Disciplinary Guidelines for Criminal Conduct*; Rules 213.27, 213.28, 213.29, 213.30, and 213.33, and Probationary Stipulations, and related matters; and
- Recommendations related to amending existing Board eligibility and disciplinary policies and rules or adopting new eligibility and disciplinary policies and rules.