

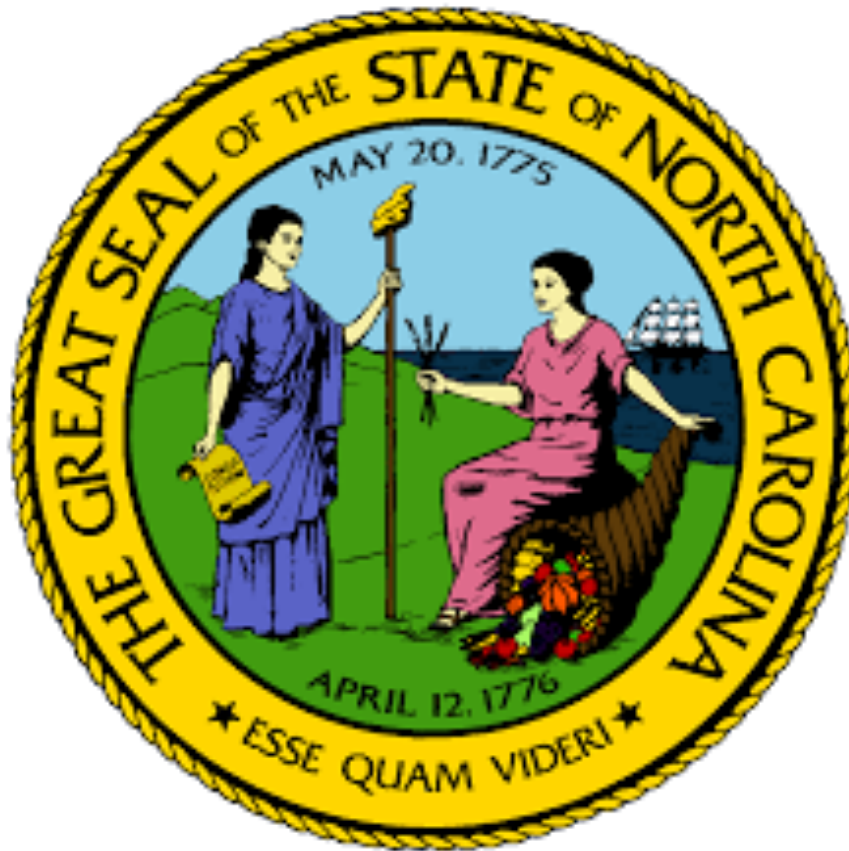
# EDUCATING BOARD MEMBERS ON THE DISCIPLINARY PROCESS

---



# North Carolina

---



# Objectives:

---

- **Protection of the Public v. Nurse Advocacy**
- **Complaint to Adjudication: Due Process**
- **Unauthorized Practice**

# Protection of the Public

---

- Protection of the Public is the job of occupational licensing boards not occupational advocacy
- That means Nursing Boards are not advocates for nurses, they are advocates for the public the nurses serve
- Make sure Board members are wearing the correct hat

# Nursing Regulation/ Registration

---

- Casualties of the Civil War = need for nurses
- Dorothea Dix marched on Washington in 1861 demanding women be allowed to treat Union soldiers- became charged with overseeing nurses assigned to US Army
- No formal schools, no credentials
- She had “standards”- no one under 30
- Schools developed in 1873
- By 1900 big debate for and against nursing registration
- 1901 New York State Nurses Association (handful of women) led the preliminary political work
- 1902 met and discussed development of a nursing practice act
- 1903 NC passed the first registration law for nurses and a Practice Act
- Nursing Registration/Nursing Practice Acts- recognized a need for professional organizations to represent their needs
- 1911: American Nurses Association developed

# Protection of the Public

---

- **Laws**

  - Administrative Procedure Act**

  - Nursing Practice Act**

- **Rules**

  - Administrative Code**

# North Carolina Practice Act

---

- Gives us our charge for Public Protection

- § 90-171.19. *Legislative findings.* —

The General Assembly of North Carolina finds that mandatory licensure of all who engage in the practice of nursing is necessary to ensure minimum standards of competency and to provide the public safe nursing care.

# The Board

---

- **§ 90.171.21.** *Board of Nursing; composition; selection; vacancies; qualifications; term of office; compensation.*

(a) The Board shall consist of 14 members. Eight members shall be registered nurses. Three members shall be licensed practical nurses. Three members shall be representatives of the public.



# Powers of the Board

---

## ■ § 90-171.23. *Duties, powers and meetings.* —

(6) Examine, license, and renew the licenses of duly qualified applicants for licensure.

(7) Cause the prosecution of all persons violating this Article.

(24) Order the production of any records concerning the practice of nursing relevant to a complaint received by the Board or an inquiry or investigation conducted by or on behalf of the Board.

**What's missing....**

---

# **Nursing Advocacy**

# Nursing Advocacy

---

- **Nursing Associations are the leaders for advocacy for nurses**
- **Boards work with them but our goals are sometimes at odds because our missions are different**
- **Board members may need to be reminded of the distinction**

# North Carolina BON Mission

---

**The mission of the North Carolina Board of Nursing is to protect the public by regulating the practice of nursing**



# Now that we are wearing the correct hat/tiara.....

---



---

# **Complaint to Adjudication: DUE PROCESS**

# Due Process

---

- The principle that an individual cannot be deprived of life, liberty, or property without appropriate legal procedures and safeguards.
- All legal procedures set by statute and court practice, including notice of rights, must be followed for each individual so that no prejudicial or unequal treatment will result. While somewhat indefinite, the term can be gauged by its aim to safeguard both private and public rights against unfairness.

# How do we accomplish...

---

## Authority:

### ■ Laws

**Administrative Procedure Act**

**Nursing Practice Act**

### ■ Rules

**Administrative Code**

### ■ Case law



# What's missing...

---

- **Your Board's policies...**
- **Important to remember that you must do what your law/rules say with regard to due process**
- **If it's in your policy/procedure and you don't do it, your boss may not like it but your action won't be overturned**

# Issues prior to charging

---

- Complaint
- Jurisdiction
- Investigation
- Attorney?
- Offer of resolution
- Settlement?

# Complaint

---

- **Anonymous**
- **Public**
- **Law Enforcement**
- **Employer**

# Jurisdiction

---

## **Nursing Practice Act**

### **■ Personal**

**Nurses not Veterinarians**

### **■ Subject matter**

**Diversion not trash on curb**

# Employment issues

---

- No jurisdiction over employment issues...

Coming to work late

Rude to coworkers

# Investigation

---

- Investigation not confidential unless given that in your Practice Act
- Investigators are fact finders, not personally invested in the matter
- Looking for evidence to show clearly and convincingly

# Attorney

---

- No right to appointed counsel as in criminal matters
- Letter of representation
- Cease communication with Licensee
- Pro se at hearing

# Violation?

---

**Now you know what happened, but is  
what happened a violation of your  
Practice Act or rules?**



# Offer of resolution

---

- Practice Act and rules tell the Board what the possible actions are:
  - Letter of concern
  - Fine
  - Reprimand
  - Probationary License
  - Suspension
  - Revocation

# Resolution

---

- **Just Culture**
- **Board Protocols guide consistency and fairness**

# Settlement?

---

## ■ § 150B-22. Settlement; contested case.

It is the policy of this State that any dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty, should be settled through informal procedures. In trying to reach a settlement through informal procedures, the agency may not conduct a proceeding at which sworn testimony is taken and witnesses may be cross-examined. If the agency and the other person do not agree to a resolution of the dispute through informal procedures, either the agency or the person may commence an administrative proceeding to determine the person's rights, duties, or privileges, at which time the dispute becomes a "contested case." (1985 (Reg. Sess., 1986), c. 1022, s. 1(11); 1991, c. 418, s. 16.)

# Settlement

---

- **Informal process**
- **Rules of evidence don't apply**
- **With/without Board members**

# Contested Case

---

- Notice of Hearing
- Hearings are Public
- Rules of Evidence apply?

§ 150B-41. Evidence; stipulations; official notice.

(a) In all contested cases, irrelevant, immaterial, and unduly repetitious evidence shall be excluded. **Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under such rules to show relevant facts, they may be shown by the most reliable and substantial evidence available.**

- Burden of Proof

# Emergency Suspensions

---

## ■ § 150B-3. Special provisions on licensing.

(c) If the agency finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license or occupational license may be ordered effective on the date specified in the order or on service of the certified copy of the order at the last known address of the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

# Judicial Review

---

- A final agency decision
- Period of days to appeal for judicial review
- Waiver of appeal if not timely filed

# Unauthorized Practice

---

- Do you have jurisdiction?
- Injunctions
- Criminal Charges
- FTC v. North Carolina Dental Board



# Questions

---

**Amy G. Fitzhugh, JD**  
**Director of Legal/ Staff Attorney**  
**North Carolina Board of Nursing**  
**[afitzhugh@ncbon.com](mailto:afitzhugh@ncbon.com)**  
**919-782-3211 ext 225**