

Clearinghouse Rule 13-097

STATE OF WISCONSIN
BOARD OF NURSING

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IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : BOARD OF NURSING
BOARD OF NURSING : ADOPTING RULES
: (CLEARINGHOUSE RULE)

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PROPOSED ORDER

An order of the Board of Nursing to repeal 7.04, amend 7.01(2), repeal and recreate 7.03 and create 7.02(1m) relating to code of conduct.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

Statutes interpreted: § 441.07

Statutory authority: §§ 15.08(5)(b) and 227.11(2)(a)

Explanation of agency authority:

The Board of Nursing has general agency authority to promulgate rules interpreting the provisions of any statute enforced or administered by the Board of Nursing.

The Board also has specific agency conferred by the legislature to promulgate rules for its own guidance and for the guidance of the profession and define and enforce professional conduct and unethical practices.

Related statute or rule: § 441.07

Plain language analysis:

Section 1 amends the statement of intent to include certificate due to the disciplinary action may be taken against an advanced practice nurse prescriber certificate.

Section 2 provides a definition for certificate.

Section 3 creates a new section defining the grounds for disciplinary action

Section 4 repeals N 7.04 which defined unprofessional conduct. This proposed rule combines the negligence and unfit to practice section with the unprofessional conduct section to make one section identifying the grounds for disciplinary action.

Summary of, and comparison with, existing or proposed federal regulation:

None

Comparison with rules in adjacent states:

Illinois: The grounds for disciplinary actions in Illinois include: findings of unethical or unprofessional conduct which includes engaging in behavior that crosses professional boundaries; sexual conduct; deceiving, defrauding or harming the public; and departure from or failure to conform to the standards of professional or practical nursing. In addition, Illinois incorporates by reference the “Code for Nurses with Interpretive Statements” and “Standards of Practice and Educational Competencies of Graduates of Practical/Vocational Nursing Programs.”

Iowa: The grounds for disciplinary actions in Iowa include: behavior which constitutes knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of a profession; behaviors which constitutes unethical conduct; behavior which constitutes fraud; behavior which constitutes knowingly making misleading, deceptive, untrue or fraudulent representations; and professional incompetency.

Michigan: The grounds for disciplinary actions in Michigan include: personal disqualifications; practicing outside the scope; unprofessional conduct; fraud or deceit; obtaining, possessing or attempting to obtain a controlled substance; and unethical business practices.

Minnesota: The grounds for disciplinary actions in Minnesota include: non-compliance with requirements; practicing outside the scope; criminal convictions; violating confidentiality; engaging in conduct with a patient that is sexual or may reasonably be interpreted as sexual; obtaining money, property or services from a patient through the use of undue influence; engaging in fraud or deceit; failing to or inability to perform professional or practical nursing with reasonable skill and safety; engaging in unprofessional conduct; actual or potential inability to practice nursing with reasonable skill and safety; engaging in any unethical conduct; improper management of patient records; and improper supervision.

Summary of factual data and analytical methodologies:

The Board of Nursing reviewed the recently adopted model rules of the National Council of State Boards of Nursing and the surrounding states as well as utilizing knowledge of

current minimum standards to determine what would be in the best interest of the state of Wisconsin when setting forth the practices which constitute grounds for discipline.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Tom.Engels@wisconsin.gov, or by calling (608) 266-8608.

Agency contact person:

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-2377; email at Sharon.Henes@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708-8935, or by email to Sharon.Henes@wisconsin.gov. Comments must be received on or before * to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. N 7.01 (2) is amended to read:

N 7.01 (2) The intent of the board of nursing in adopting this chapter is to specify grounds for limiting, suspending, revoking or denying renewal of a license or certificate or for reprimanding a license or certificate.

SECTION 2. N 7.02(1m) is created to read:

N 7.02(1m) "Certificate" means a certificate of an advanced practice nurse prescriber.

SECTION 3. N 7.03 is repealed and recreated to read:

N 7.03 Grounds for denying renewal or disciplinary action. The grounds for denying renewal or taking disciplinary action on a license or certificate are as follows:

- (1) Noncompliance with federal, jurisdictional or reporting requirements including:
 - (a) Engaging in conduct that violates the security of the licensure examination or the integrity of the examination results.
 - (b) Having a license to practice nursing or a nurse licensure compact privilege to practice denied, revoked, suspended, limited or otherwise disciplined in another state, territory or country. A certified copy of the record of the board is conclusive evidence of the final action.
 - (c) After a request of the board, failing to cooperate in a timely manner, with the board's investigation of a complaint filed against a license holder. There is a rebuttable presumption that a credential holder who takes longer than 30 days to respond to a request of the board has not acted in a timely manner.
 - (d) Practicing without an active license.
 - (e) Practicing beyond the scope of practice permitted by law.
 - (f) Failing to inform the board of the advanced practice nurse prescriber's certification status with a national certifying body as a nurse anesthetist, nurse-midwife, nurse practitioner or clinical nurse specialist.
 - (g) Violating any term, provision or condition of any order of the board.
 - (h) Failing to notify the board of a felony or misdemeanor in writing of the date, place and nature of the conviction or finding within 48 hours after the entry of the judgment of conviction. Notice shall include a copy of the judgment of conviction and a copy of the complaint or other information which describes the nature of the crime in order that the board may determine whether the circumstances of the crime of which the credential holder was convicted are substantially related to the practice of nursing.
 - (i) Failing to report to the board or institutional supervisory personnel any violation of the rules of this chapter by a licensee. This provision does not require a nurse to report treatment information which would fall within the nurse-patient privilege set forth in s. 905.04(1)(b).
- (2) Violating or aiding and abetting a violation of any law substantially related to the practice of nursing. Being convicted of any crime substantially related to the practice of nursing. A certified copy of a judgment of conviction is prima facie evidence of a violation.
- (3) Confidentiality, patient privacy, consent or disclosure violations, including:
 - (a) Failing to safeguard the patient's dignity, and the right to privacy.
 - (b) Knowingly, recklessly or negligently divulging a privileged communication or other confidential patient health care information except as required or permitted by state or federal law.

(c) Making statements or disclosures that create a risk of compromising a patient's privacy, confidentiality and dignity, including statements or disclosures via electronic or social media.

(4) Misconduct or abuse, including:

(a) Soliciting, borrowing, misappropriating, obtaining or attempting to obtain money or property from a patient or a patient's family.

(b) Obtaining or attempting to obtain any compensation by fraud, misrepresentation, deceit, duress or undue influence in the course of nursing practice.

(c) Abusing a patient by a single or repeated act of force, violence, harassment, deprivation, neglect, or mental pressure which reasonably could cause physical pain or injury or mental anguish or fear.

(d) Engaging in repeated or significant disruptive behavior or interaction with health care personnel, patients, family members or others that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered.

(e) Violating principles of professional boundaries, including:

1. Failing to establish, maintain or communicate professional boundaries with the patient.

2. Engaging in relationships with patients that could impair the nurse's professional judgment;

3. Exploiting in any manner the professional relationship with a patient for the nurse's emotional, financial, sexual or personal advantage or benefit.

4. Engaging in dual relationships if the nurse's ability to provide appropriate care would be impaired due to the nature of the additional relationship with the patient.

5. Engaging in any dual relationship in mental health nursing.

6. Engaging in self-disclosure to a patient which creates a risk or adversely impacts the patient's care and well-being.

7. Using any confidence of a patient to the patient's disadvantage or for the advantage of the nurse.

8. Failing to have a written agreement with the patient regarding financial matters.

9. Arrangements for reimbursement must be made at the initiation of the nurse-patient relationship or the case of emergency treatment as soon as is practicable.

10. Accepting gifts which are more than minimal value or cash from a patient or patient's family.

This paragraph does not include providing health care services to a person with whom the nurse has a preexisting, established personal relationship where there is no evidence of or potential for exploiting the patient and contact that is necessary for a health care purpose that meets the standards of the profession.

(f) Engaging in sexually misconduct, including:

1. Sexual explicit conduct, sexual contact, exposure, gratification, other sexual behavior with or in the presence of a patient.
2. Conduct that may reasonably be interpreted by a patient as sexual or in any verbal behavior that is sexually harassing to a patient.
3. Posing, photographing or recording the body or any body part of a current or former patient, other than for health care purposes.
4. Transmitting information about a patient via electronic media that can be reasonably interpreted as sexual or sexually demeaning by the current or former patient.
5. Engaging or attempting to engage in sexual or seductive conduct with a former patient if doing so creates a risk that the relationship could cause harm to or exploitation of the former patient.

For the purpose of this paragraph, due to the unique vulnerability of mental health patients, including patients with substance use disorders, nurses are prohibited from engaging in or attempting to engage in sexual or seductive conduct with such former patients, a former patient's immediate family or person responsible for the patient's welfare, for a period of at least 2 years after the termination of nursing services.

- (5) Fraud, deception or misrepresentation, including:
 - (a) Falsifying or inappropriately altering reports, patient documentation, agency records and other health documents.
 - (b) Intentionally making incorrect entries in a patient's medical record or other related documents.
 - (c) Engaging in abusive or fraudulent billing practices, including violations of federal Medicare and Medicaid laws or state laws.
 - (d) Submitting false claims.
 - (e) Fraud, deceit or material omission in obtaining a license or certification or in the renewal of the license or certification.
 - (f) Impersonating another licensee or allowing another person to use the licensee's credential for any purpose.
 - (g) Submitting false information in the course of an investigation.
 - (h) Misrepresentation of credentials.
 - (i) Misleading, false or deceptive advertising or marketing.

- (6) Unsafe practice or substandard care, including:
 - (a) Failing to perform nursing with reasonable skill and safety.
 - (b) Lack of knowledge, skill or ability to discharge professional obligations within the scope of nursing practice.
 - (c) Departing from or failing to conform to the minimal standards of acceptable nursing practice that may create unnecessary risk or danger to a patient's life, health or safety. Actual injury to a patient need not be established.
 - (d) Failing to supervise student experiences as a clinical nursing instructor.
 - (e) Failing to report to or leaving a nursing assignment without properly notifying appropriate supervisory personnel and ensuring the safety and welfare of the patient or client.

- (f) Practicing nursing while under the influence of alcohol, illicit drugs or while impaired by the use of legitimately prescribed pharmacological agents or medications.
 - (g) Unable to practice safely by reason of alcohol or other substance use.
 - (h) Unable to practice safely by reason of psychological impairment or mental disorder.
 - (i) Unable to practice safely by reason of physical illness or impairment.
 - (j) Failure to consult or delay in consultation with supervisor.
 - (k) Failure to treat.
 - (L) Inadequate or improper infection control practices.
 - (m) Failure to provide medically reasonable or necessary items or services.
 - (n) Discriminating on the basis of age, marital status, gender, sexual preference, race, religion, diagnosis, socioeconomic status or disability while providing nursing services.
 - (o) Executing an order which the licensee knew or should have known would harm or present the likelihood of harm to a patient.
 - (p) Failing to execute a medical order unless the order is inappropriate and the licensee reports the inappropriate order to a nursing supervisor or other appropriate person.
 - (q) Failing to observe the conditions, signs and symptoms of a patient, record them, or report significant changes to the appropriate person.
- (7) Improper supervision or allowing unlicensed practice, including:
- (a) Delegating a nursing function or a prescribed health function when the delegation could reasonably be expected to result in unsafe or ineffective patient care.
 - (b) Knowingly aiding, assisting, advising or allowing a person to engage in the unlawful practice of nursing.
 - (c) Inappropriate or inadequate supervision or delegation.
- (8) Improper prescribing, dispensing, administering medication or drug related offenses, including:
- (a) Prescribing of any drug other than in the course of legitimate practice or as otherwise prohibited by law.
 - (b) Dispensing of any drug other than in the course of legitimate practice or as otherwise prohibited by law.
 - (c) Administering any drug other than in the course of legitimate practice or as otherwise prohibited by law.
 - (d) Error in prescribing, dispensing or administering medication.
 - (e) Obtaining, possessing or attempting to obtain or possess a drug without lawful authority.

SECTION 4. N 7.04 is repealed.

SECTION 5. EFFECTIVE DATE The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

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(END OF TEXT OF RULE)

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Dated _____

Agency _____

Member of the Board
Board of Nursing