

## **Crimes Directly Related to the Professions of Nursing and Dietetics-Nutrition**

Nurses practice autonomously in a wide variety of settings and provide care to individuals who are physically, emotionally, or financially vulnerable. These individuals include the elderly, children, sedated or anesthetized patients, individuals with mental or cognitive disorders, and disabled or immobilized individuals. The State Board of Nursing (Board) has long held the view that nurses or individuals who are applying for a license that engage in certain types of criminal conduct place patients, healthcare employers and the public at risk of harm now or in the future. The Board has determined that crimes involving fraud or theft; crimes involving sexual misconduct; crimes involving lying, falsification or deception; crimes involving drugs or alcohol; and crimes involving violence or threatening behavior are directly related to the profession as more specifically detailed below. The Board is not the first board of nursing to be charged with the task of compiling a list of crimes directly related to the profession. The Texas and Delaware boards of nursing have previously published similar lists of crimes directly related to the profession.

### **Crimes Involving Fraud or Theft**

Nurses often have unfettered access to individual's confidential information, financial information, and valuables. Nurses also provide around the clock care, working night and weekend shifts at hospitals, surgical centers, long term care facilities, and home health settings, where there is often no direct supervision of the nurse. Individuals who are dependent on a nurse's care must have the utmost confidence in their care provider as there may be periods where the individual is asleep, sedated or otherwise incapacitated. Further, the Board's regulations at 49 Pa. Code §§21.18(b)(4) and 21.148(b)(4) specifically prohibit misappropriation of money, material or property from an employer or patient. Similarly, the Board's regulations at 49 Pa. Code §§21.18(b)(5) and 21.148(b)(5), prohibit a nurse from soliciting, borrowing or misappropriating money, materials or property from a patient or the patient's family. When a nurse or applicant has engaged in criminal behavior involving fraud or theft in the past, the Board is mindful that similar conduct may be repeated, thereby placing patient, healthcare employers, and the public at risk.

### **Crimes Involving Sexual Misconduct**

Nurses also frequently provide care to partially clothed or fully undressed individuals, who are vulnerable to exploitation. Nursing care can be very intimate, so professional boundaries are of the utmost importance. When a nurse or applicant has engaged in criminal conduct involving any type of sexual misconduct, the Board is mindful that similar conduct may be repeated in practice. Such conduct may involve touching body parts when not necessary, voyeurism, exposure of body parts when not necessary, and surreptitious touching. As such, the Board considers such crimes involving any type of sexual misconduct to be highly relevant to an individual's ability to practice the profession. Section 3113 of Act 53, 63 Pa. C.S. §3113, created a permanent bar to licensure for certain sexual offenses. However, the Board is mindful that there are other offenses involving sexual misconduct that are not on that list that directly relate to an individual's ability to practice the profession.

### **Crimes Involving Lying, Falsification, and Deception**

Nurses are expected to accurately and honestly report and record information in a variety of sources, such as medical records, pharmacy records, billing records, nursing notes, and plans of care, as well as report errors in their own nursing practice. The Board's regulations at 49 Pa.

Code §§21.18(b)(8) and 21.148(b)(8) prohibit nurses from falsifying or knowingly making incorrect entries in the patient's record or other related documents. When a nurse has engaged in criminal behavior involving lying, falsification, or deceptive conduct, the Board is mindful that similar misconduct may be repeated in nursing settings, thereby placing patients, healthcare employers, and the public at risk.

#### Crimes Involving Drugs and Alcohol

Nurses have ready access to drugs, including controlled substances. This provides nurses with ample opportunity to divert drugs, either for personal use or for unlawful distribution to others. Nurses have a duty to lawfully administer or otherwise distribute drugs lawfully. Further, nurses have a duty to their patients to provide safe, effective nursing care and to be fit to practice. Nurses who have a substance use disorder may exhibit impairment in both cognitive and motor functioning. A nurse affected by a substance use disorder may be unable to accurately assess patients, make appropriate judgments, or intervene in a timely and appropriate manner. This danger may be heightened when the nurse works in an autonomous setting where other healthcare providers are not present to provide interventions for the patient. As such, the Board considers crimes related to the use, possession or distribution of drugs or alcohol to be highly relevant to a nurse's ability or fitness to practice. Act 53 limited the automatic suspension provisions of the nursing acts to drug trafficking crimes as defined in the Act. However, the Board is mindful that, with their access to drugs, nurses must be counted on to lawfully use and distribute medications.

#### Crimes Involving Violence or Threatening Behavior.

Nurses provide care to the most vulnerable of populations, including individuals who often have no voice of their own and cannot advocate for themselves. Further, patients are dependent on the nurse-patient relationship for their daily care. Further, the Board's regulations at 49 Pa. Code §§21.18(a)(2) and 21.148(a)(2) specifically require nurses to respect and consider, while providing nursing care, the individual's right to freedom from psychological and physical abuse. When a nurse has engaged in violent or threatening criminal behavior in the past, the Board is mindful that patients may be at risk for similar behavior in a healthcare setting. As such, the Board considers crimes involving violence and threatening behavior to be highly relevant to a nurse's ability or fitness to practice.

#### Licensed Dietitian-nutritionists

The Board is mindful that practice settings for licensed dietitian-nutritionists have expanded and they are held to the same high standards as nurses regarding trustworthiness. Therefore the Board finds that crimes involving fraud or theft; crimes involving sexual misconduct; crimes involving lying, falsification or deception; crimes involving drugs or alcohol; and crimes involving violence or threatening behavior are directly related to the ability or fitness to practice the profession. Although LDNs do not administer drugs as nurses do, the legislature included them in the provision of the Professional Nursing Law that imposed a 10-year bar to licensure for felony drug trafficking convictions under the Controlled Substance, Drug, Device and Cosmetic Act, so the Board believes it is likewise important to include drug and alcohol related

crimes on the list of crimes that has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the profession.

#### Effect of Being Convicted of a Crime Found on the List

Having a criminal conviction that is on the list is not necessarily a bar to licensure, nor does it mean that an applicant will not be granted a license. The Board will do the analysis of the crime as required by Act 53 and make a determination. As has been the Board's practice, an applicant will be asked to provide a personal statement regarding the conviction with their application to put the crime into context and provide any mitigation for the Board to consider. In recent years the Board has denied very few license applications based on a criminal conviction.

If a current licensee is convicted of a crime on the list, they still have due process protections before any discipline would be imposed upon the license. The exception to this is the automatic suspension of the license for felony drug trafficking convictions under the Controlled Substance, Device and Cosmetic Act (Drug Act) and the automatic suspension for misdemeanor convictions under the Drug Act. There the license is suspended by operation of law and the licensee has an opportunity for a hearing after the suspension of the license.