



Your state board of nursing Friend or foe?

If someone files a complaint against you with the board of nursing, get a lawyer. BY LORIE A. BROWN, RN, MN, JD

WHEN SARAH ARRIVED HOME after working the evening shift at an extended-care facility, she found a white envelope from her state Attorney General's office in her mail. To her dismay, she learned that her prior employer had filed a complaint against her with the state board of nursing alleging that she'd been abusive to patients. The letter listed three incidents:

- She'd required a resident to walk 10 feet to get to a wheelchair.
- She'd spoken loudly to patients.
- She'd used obscene language

within earshot of patients.

Sarah was shocked. *How could they do this to me?* she thought. *I was always on time. I had good evaluations and I provided excellent care to residents.* Surely if she just went to the nursing board and told them the truth, they'd dismiss the complaint.

If this scenario sounds far-fetched, let me assure you it's not. Sarah was a client of mine. (I've changed her name and some identifying details to maintain confidentiality.) Like many nurses called before the state board of

nursing, she faced charges against her license that seemed to come out of the blue. Because her case illustrates what you could expect if you found yourself in similar circumstances, let me share her story with you.

Calling for help

After a restless night, Sarah decided she needed a lawyer and called the American Association of Nurse Attorneys at 1-877-538-2262. She was given the names and phone numbers of nurse-attorneys in her area who have experience defend-

ing nurses before the licensing board. I was at the top of the list, so she called me.

I told Sarah that some insurance policies cover disciplinary defense proceedings and that she should check her nursing malpractice policy to see if she had coverage. Then I told her to write down everything she remembered about the incidents. Memories fade and the best way to preserve your version of the facts is to write them down.

Sarah claimed that she'd encouraged the resident named in the complaint to walk 10 feet to his wheelchair because the primary care provider's order said to encourage the resident to walk three times daily. She acknowledged that she spoke loudly to residents, but only because many of them were hard of hearing. She said she had no excuse for the swearing, except that she didn't realize any residents were in earshot. She was sorry about that.

Sarah firmly believed that if the nursing board members heard her side of the story, they'd dismiss the complaint. To help her understand why this assumption was flawed, I reviewed with her the composition and function of a state nursing board.

Who's on the board?

Most nursing boards include RNs, LPNs/LVNs, and one or more consumer members. Under the authority of your state's nurse practice act, the board makes and enforces rules defining the scope of nursing practice in your state. The goal is to protect the health, safety, and welfare of citizens in the state through licensure of individual nurses, regulation of educational programs for nursing students, and regulation of practice. Because of this mandate, the board places public welfare above the interests of any individual nurse.

Staying on the right side of the law

You're less likely to step on the wrong side of the law if you remember that your primary obligation is always to protect your patient. Besides reviewing your state's nurse practice act and facility policies and procedures for specific information defining your scope of practice, remember these principles:

- If a prescriber orders something dangerous or unethical, don't do it. Discuss the order with the prescriber. If she doesn't change the order, follow the chain of command in your facility.
- Make sure you're qualified to carry out the orders received. If you have concerns regarding a particular order or assignment, contact your supervisor and document that conversation.
- If you suspect misconduct on the part of a colleague, you may have an affirmative duty to report that misconduct, especially if it involves witnessing the taking of controlled substances.

In contrast, professional associations promote recognition and seek to improve nursing practice. Unlike nursing board members, who are appointed by the governor or some other governmental official, officers of professional organizations are elected by the membership and guided by its president.

Anyone can file a complaint with a state nursing board, including patients, their families, professional peers, and nurse-managers. The complaint could involve allegations of ongoing malpractice or only a single incident. In most states, nurses have an opportunity to respond. In Sarah's case, the response was due in 20 days.

Sarah was smart to consult an attorney before preparing her response because it could be used against her. I told her that the response should be brief and objective. An experienced attorney is the best person to frame a response because a misstatement could come back to haunt her.

Under investigation

I explained to Sarah that investigators from the Attorney General's office would investigate the complaint against her. (In some states, investigators from

the board of nursing do this instead.) Investigators contact all witnesses for information and take their statements. They can also subpoena documents and medical records and get a copy of the facility's policies and procedures. If investigators feel confident that the state can prove its case, charges are filed.

When a client of mine is under investigation, I like to meet with the investigator and try to dissuade him from filing charges. Unfortunately, however, I wasn't successful in Sarah's case and she was formally charged with patient abuse.

If the state could prove its charges, Sarah might face disciplinary action, such as receiving a written reprimand, being placed on probation, or having her license suspended or even revoked. Sarah was devastated.

Keep in mind that the board's power is limited to action against nursing licenses—not to criminal or civil penalties. However, if circumstances warrant, civil or criminal charges could be filed additionally, regardless of the board's action.

Sarah's hearing was set in 3 months. Some boards meet only once a month or once every other month. If a case is last on the schedule and the board runs out

of time, it may be held over to the next hearing date.

An attorney's role—and yours

It was up to me to prepare a defense. Sarah's job was to provide me with complete and accurate information about all the events for which she was charged.

I obtained statements from witnesses and reviewed pertinent information from the medical records and policies and procedures of the facility. I also took a deposition from a witness at the extended-care facility.

From my investigation, I knew that the prosecution would argue that Sarah should have deferred to the patient's refusal to walk to the wheelchair. I also learned that



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Sarah talked loudly to everyone—that was just her style—and that she did cuss frequently when she was frustrated or stressed.

Based on all this information, I thought that the board would probably impose some type of sanction, most likely probation. I decided to try to negotiate the best terms possible for Sarah and settle the matter without a hearing.

When I met with the attorney in charge of prosecuting Sarah's case, I discussed how Sarah was an excellent employee: All of her evaluations had been average or above average. I argued that the charges in the complaint were isolated incidents and that a written reprimand would suffice. But the state's attorney was determined to proceed with the charges, so my focus changed from negotiation to preparing Sarah for the hearing.

Polished professional image

Before the hearing, I advised Sarah to dress in conservative, profes-

sional clothing. I also described the hearing room for her so she'd know what to expect.

Participants would sit at a square table, with the board members on two sides, the court reporter and executive director for the nursing board on the third side, and the state's attorney, Sarah, and me on the fourth. A chair would be reserved for witnesses, who'd be called one at a time.

I also informed her that the proceeding was less formal and restrictive than a courtroom trial. For example, evidence that wouldn't be admissible in court might be admitted before the board. Board members would ask questions of witnesses when they felt it necessary, not according to a rigid protocol.

During the hearing, the board heard testimony from Sarah and from various witnesses to the incidents in question. Afterward, the board members openly discussed the matter. (How the board arrives at a decision varies among states.) They concluded that patient abuse had occurred when Sarah had raised her voice and when she had failed to respect a patient's right to refuse to ambulate. They put her on probation for 2 years and required her to take a 6-hour anger-management course.

During the probationary period, Sarah was required to notify the board of any changes in her home and work addresses. Her manager gave the board quarterly reports regarding her ability to interact with patients.

Certainly, this was not the outcome Sarah had hoped for, but it was what board members felt was in the best interest of the citizens of her state.

Sarah and I discussed appealing the board's decision, but we knew that it would be very difficult, given the evidence. It would also be costly and time-consuming.


Part of Sarah's probation included a requirement that she work only day shifts. When she accepted a 12-hour shift, she was found to be in violation of her probation and lost her license.

Sarah learned a hard lesson: The board's authority over your license doesn't end with the hearing. Any disciplinary action imposed by the board must be taken seriously and followed to the letter.

Protecting your license

No longer a nurse, Sarah works in a law firm today. But she shares her story with nurses so that they can protect their hard-earned licenses.

As Sarah discovered, a license to practice nursing is a privilege, not a right, and it can be taken away. The best defense is to avoid mistakes and misjudgments that could land you in front of the board of nursing.

When was the last time you reviewed the nurse practice act in your state? The National Council of State Boards of Nursing Web site has links to all state boards of nursing Web sites. Why not go online and review your nurse practice act today? 

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SELECTED WEB SITE

National Council of State Boards of Nursing
<http://www.ncsba.org>
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