

# Disciplinary Guidelines for Applicants and Licensees With Criminal Histories: The Need for Uniformity

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Evidence-based enforcement guidelines for criminal matters can help BONs establish fairer uniform disciplinary standards and thus reduce inconsistent discipline among the states. Moreover, removing vague and overbroad standards will decrease inconsistent discipline. Boards should publish their rules, policies, and guidelines and make them available to the public. These changes will increase the predictability of sanctioning decisions and decrease the adverse effects of inconsistent laws, rules, and guidelines.

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Imagine you were initially licensed as a registered nurse (RN), licensed practical nurse (LPN), or advanced practice registered nurse (APRN) in a state that is not a member of the Nurse Licensure Compact (NLC). At the time of licensure, you disclosed two previous arrests: minor in possession and driving while intoxicated. However, you were not convicted of either charge, and because the state only disciplines an applicant or licensee for convictions, you were licensed with no disciplinary action and have been licensed for 5 years.

When you apply for endorsement in another state, you again disclose your two arrests. However, the other state, which is not a member of the NLC, disciplines applicants or licensees for crimes considered to be related to the fitness to practice nursing. Instead of receiving notice that you are licensed, you receive a demand letter addressing your arrests and the allegation that your arrests are crimes that violate the state's rules and regulations. Later, you receive a consent order that will delay your licensure by endorsement until you meet certain stipulations. When you enter into the consent order, your name will likely be published in the state's disciplinary report, and the disciplinary information will be placed in a national database.

Now imagine that your home state is an NLC member and that you were initially issued a multistate license there. However, for 5 years, you worked in another state, which is a party state that adopted the NLC. When you move to the state where you work, you must declare it your home state and apply for licensure by endorsement. But the inconsistencies in the laws, rules, regulations, and guidelines between the states remain. Although you have worked in a state through your multistate license for 5 years, that state may issue you a license by endorsement, issue you

a license by endorsement with stipulations, or deny you licensure by endorsement.

These simple scenarios illustrate the inconsistencies among the laws, rules, regulations, and guidelines of the states. Through a literature review, this article compares the differing laws concerning criminal offenses and assesses how state boards of nursing (BONs) define "adverse to the practice of nursing"—if they define it at all. The article also examines guidelines for discipline of applicants and licensees with criminal offenses, including variations in discipline and the public availability of the guidelines. Lastly, the article addresses the effects of inconsistent laws, rules, and guidelines pertaining to criminal histories, such as NLC issues, decreased licensee mobility, and collateral consequences.

## Literature Review

A review of the literature was conducted in Westlaw, LexisNexis, Google Scholar, and the *Journal of Nursing Regulation* to search for articles related to disciplinary guidelines for applicants and licensees with criminal histories. An initial search revealed little to no information regarding disciplinary guidelines related to nurses with criminal histories; thus, the search was expanded to include other disciplinary guidelines, such as those for drug diversion and practice issues, best practices for disciplinary guidelines, and disciplinary guidelines for other occupations. This search produced the following themes: evidence-based enforcement; fair uniform standards; removal of vague and overbroad standards; predictability of sanctioning decisions; resources for board staff, members, attorneys, licensees, and applicants; and publication of rules, policies, and guidelines. Table 1 summarizes the literature on court cases, and Table 2 summarizes the literature on laws and statutes.

## Evidence-Based Enforcement

Generally, regulatory enforcement guidelines should be evidence based. The data used to establish enforcement guidelines and policies should be collected according to strictly defined protocols. In cases in which data are produced or collected by the agency itself, they should be regularly cross-checked by independently conducted representative surveys (Organisation for Economic Co-operation and Development [OECD], 2014, p. 21). However, no national data exist regarding the number of people denied licenses because of a criminal record or the type of crimes that result in licensure denial (Rodriguez & Avery, 2015). To increase data collection, the Ohio BON and the Medical Board of Ohio developed strategies to address the balance between re-entry efforts and public safety (Dilling & Miller, 2012, p. 45). One strategy was establishing data collection requirements to track the number of licenses, permits, registrations, and certificates denied, revoked, or suspended because of a criminal conviction or guilty plea as well as the reasons for the denials, revocations, or suspensions (Dilling & Miller, 2012, p. 46).

Research has shown that regulatory enforcement agencies should develop and track indicators that give an early warning of changes in the likelihood of occurrence and the magnitude of consequences. Moreover, the frequency of revisiting risk assessments should be linked to the agency's understanding of differences in the likelihood that compliance risk may change over time (OECD, 2014, p. 29). Creating regulatory enforcement guidelines and policies using data and continuously collecting data allows enforcement guidelines and policies to be continuously updated using the results of investigations, monitoring, and analysis of all available resources of information on ongoing trends in the field of nursing (Rodriguez & Avery, 2015).

## Uniform Disciplinary Standards

In accordance with published recommendations (Rodriguez & Avery, 2015), BONs should adopt similar, uniform standards to enhance enforcement of each state's nurse practice act (NPA) and to increase the efficiency of the NLC. BONs should adopt rules, policies, and guidelines requiring board staff to develop and implement enforcement policies based on risk proportionality (Rodriguez & Avery, 2015). Guidelines can help BONs assess essential information consistently and objectively (Priola-Surowiec et al., 2014). Moreover, guidelines help ensure that decision making is consistent, transparent, and focused on the BON's mission to protect and promote the welfare of patients and the public (Hopkins & Thomas, 2013).

## Inconsistent Discipline for Criminal Matters

An applicant's or licensee's criminal history should be taken into consideration before he or she receives licensure (Priola-Surowiec et al., 2014; Blubaugh, 2012; Cabos, 2012). Thus, questions regarding criminal history are asked by each BON at the time of application. However, inconsistencies regarding the crimes that

require discipline and the severity of the discipline exist among BONs. Differences include how BONs address arrests, misdemeanor convictions, felony convictions, blanket bans for certain convictions, and convictions for crimes related to the practice of nursing or involving moral turpitude.

## Arrests

In many states, licensing boards may consider an arrest, even if it does not result in a conviction, when making the decision to license an applicant or discipline a licensee (U.S. Department of Treasury, 2015). An arrest may be grounds for disciplinary action of an applicant or licensee in New Jersey, North Dakota, and South Carolina (Refusal to license or renew, grounds, 2013; Grounds for discipline – Penalties, 2013; Grounds for discipline of licensees, 2004).

In New Jersey, the BON may discipline an applicant or licensee if he or she has “engaged in acts constituting any crime or offense involving moral turpitude or relating adversely to the activity regulated by the board” (Refusal to license or renew, grounds, 2013). Under North Dakota law, the BON may take disciplinary action if an applicant or licensee has been arrested for a crime “that relates adversely to the practice of nursing” (Grounds for discipline – Penalties, 2013). In South Carolina, the BON may discipline an applicant or licensee who has “violated a federal, state, or local law involving alcohol or drugs or committed an act involving a crime of moral turpitude” (Grounds for discipline of licensees, 2004). Moreover, South Carolina law provides that a conviction is not required to prove misconduct, and the BON may receive evidence to reach an independent conclusion regarding the commission of the violation. However, if action is taken on an arrest alone, the criminal justice system is removed from the scenario, and the BON adjudicates the criminal matter in an administrative setting. These laws allow BONs to independently prove the commission of a crime under a lesser burden of proof than required by the criminal justice system. Although discipline for an arrest only removes the need for a conviction and the distinction of misdemeanor and felony crimes, the BON is under additional scrutiny. BONs operating under such rules should have guiding documents that aid in applying sanctions to applicants and licensees.

## Convictions

*Hoyte v. Board of Regents* (1969) held that being found guilty of a misdemeanor was insufficient grounds for revoking an RN's license. However, before seeking disciplinary action, most BONs require that an applicant or licensee be convicted of the crime, regardless of whether it is a misdemeanor or felony. These BONs include Arizona, Arkansas, California, Colorado, Delaware, District of Columbia, Florida, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, Oregon, Oklahoma, Pennsylvania, Ohio, Rhode

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