

## **21 NCAC 36 .0217      INVESTIGATIONS; DISCIPLINARY HEARINGS**

(a) Behaviors and activities that may result in disciplinary action by the Board shall include the following:

- (1) drug or alcohol abuse or use of any substance or other agents while on duty or on call to the extent that such use impairs the nurse's ability to practice nursing;
- (2) testing positive on a drug screen for a non-prescribed drug or illicit substance;
- (3) illegally obtaining, possessing, or distributing drugs or alcohol for personal or other use or other violations of the North Carolina Controlled Substances Act, G.S. 90-86 et seq.;
- (4) conviction of any crime that bears on a licensee's fitness to practice nursing;
- (5) failure to make client information available to another health care professional;
- (6) practicing or offering to practice beyond the scope permitted by law;
- (7) accepting and performing professional responsibilities that the licensee knows or has reason to know that he or she is not competent to perform;
- (8) performing, without supervision, professional services that the licensee is authorized to perform only under the supervision of a licensed professional;
- (9) abandoning an assigned client without making arrangements for the continuation of equivalent nursing care;
- (10) neglecting a client in need of nursing care;
- (11) threatening, harassing, abusing, or intimidating a client;
- (12) failing to maintain an accurate record of all pertinent health care information as defined in Rule .0224(f)(2) or .0225(f)(2) for each client;
- (13) failing to exercise supervision over individuals who are authorized to practice only under the supervision of the licensed professional;
- (14) exercising influence on the client for the financial or personal gain of the licensee;
- (15) directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive any fee or other consideration to or from a third party for the referral of a client, or other violations of G.S. 90-401;
- (16) failing to file a report, or filing a false report, required by law or by the Board or impeding or obstructing such filing or inducing another person to do so;
- (17) obtaining, accessing, or revealing healthcare information from a client record or other source, except as required by professional duties or authorized by law;
- (18) presenting false or fraudulent licensure information for any purpose;
- (19) assigning or delegating professional responsibilities to a person if the licensee assigning or delegating these responsibilities knows or has reason to know that such individual is not qualified by training, experience, or licensure;
- (20) assigning or delegating responsibilities to an individual if the licensee assigning or delegating knows or has reason to know that the competency of that individual is impaired by sleep deprivation, physical or psychological conditions, or alcohol or other agents, prescribed or not;
- (21) accepting responsibility for client care while impaired by sleep deprivation, physical or psychological conditions, or by alcohol or other agents, prescribed or not;
- (22) falsifying a client's record or the controlled substance records;
- (23) violating boundaries of a professional relationship such as physical, sexual, emotional, or financial exploitation of a client or a client's family member or caregiver. Financial exploitation shall include accepting or soliciting money, gifts, or the equivalent during the professional relationship;
- (24) misappropriating, in connection with the practice of nursing, anything of value or benefit, including any real or personal property of the client, employer, or any other individual or entity, or failing to take precautions to prevent such misappropriation. Failure to take precautions to prevent misappropriations shall include failing to secure anything of value or benefit, such as medication or property, of the client, employer, or any other individual or entity; or
- (25) violating any term of probation, condition, or limitation imposed on the licensee by the Board.

(b) If a summary suspension is issued pursuant to G.S. 150B-3(c), the order shall be effective on the date specified in the order or upon service of the certified copy of the order at the last known address of the licensee, whichever is later, and continues to be effective during the suspension proceedings. Failure to receive the order because of refusal of service or unknown address shall not invalidate the order.

(c) All motions related to a contested case, except motions for continuance and those made during the hearing, shall be in writing and submitted to the Board at least 10 calendar days before the hearing. Pre-hearing motions shall be heard at a pre-hearing conference or at the contested case hearing prior to the commencement of testimony. The

designated administrative law counsel shall hear the motions and the response from the non-moving party pursuant to Rule 6 of the General Rules of Practice for the Superior and District Courts and shall rule on the motions.

(d) Motions for a continuance of a hearing may be granted upon a showing of good cause. Motions for a continuance shall be in writing and received in the office of the Board no less than seven calendar days before the hearing date. In determining whether good cause exists, consideration shall be given to the ability of the party requesting a continuance to proceed without a continuance. A motion for a continuance filed less than seven calendar days from the date of the hearing shall be denied unless the reason for the motion could not have been ascertained earlier. Motions for continuance filed prior to the date of the hearing shall be ruled on by the administrative law counsel of the Board. Motions for continuance filed on the date of hearing shall be ruled on by the Board.

(e) The Board shall designate an administrative law counsel who shall advise the Board.

(f) If a majority of the members of the Board is unable or elects not to hear a contested case, the Board shall request the designation of an administrative law judge from the Office of Administrative Hearings to preside at the hearing. The provisions of G.S. 150B, Article 3A and this Rule shall govern a contested case in which an administrative law judge is designated as the Hearing Officer.

*History Note: Authority G.S. 90-171.23(b)(3); 90-171.23(b)(7); 90-171.37; 90-171.47; 90-401; 150B-3(c); 150B-38; 150B-39; 150B-40; 150B-41; 150B-42;*  
*Eff. February 1, 1976;*  
*Amended Eff. October 1, 1989; November 1, 1988; July 1, 1986; July 1, 1984;*  
*Temporary Amendment Eff. December 7, 1990 for a period of 180 days to expire on June 5, 1991;*  
*ARRC Objection Lodged December 20, 1990;*  
*Amended Eff. January 1, 1991;*  
*ARRC Objection Removed February 25, 1991;*  
*Temporary Amendment Eff. February 26, 1991 for a period of 35 days to expire on April 1, 1991;*  
*Amended Eff. January 1, 1996; February 1, 1995; April 1, 1991;*  
*Temporary Amendment Eff. March 5, 2001;*  
*Amended Eff. June 1, 2017; January 1, 2007; August 2, 2002;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 9, 2018;*  
*Amended Eff. January 1, 2019.*