

CHAPTER 10

WHAT HAPPENS AT A BOARD OF NURSING MEETING?

I. INTRODUCTION

The Florida Department of Health has many boards which regulate various licensed health care professions. One of the boards that makes up the Department of Health is the Board of Nursing. The Board of Nursing regulates the nursing profession.

For more details on the Department of Health and the other state agencies which may regulate health care, please see the separate chapter on this in this Manual.

The Board of Nursing holds public meetings in which it conducts all of its business. These meetings are scheduled in advance. Notice of when and where they are going to be held is available on its website usually several months in advance. The Board of Nursing rotates its meetings around the state, each time meeting in a different major city. Therefore, one meeting may be held in Jacksonville, the next meeting may be held in Ft. Lauderdale, and the next meeting may be held in Orlando.

The Board of Nursing is required by law to publish its agenda ahead of time so that the public is aware of matters that may come up in the event they want to attend the meeting. Usually these are published from 20 to 30 days ahead of time. Board of Nursing meetings are very interesting. Usually, nursing schools will require their students to attend, if the meeting is held near them.

If you have never attended a Board of Nursing meeting, you should. You should especially attend one if you have a pending Department of Health investigation against you. Attending a Board of Nursing meeting will give you a lot of insight into whether or not to elect an informal hearing if your case progresses past the probable cause panel stage. (See separate chapter in this Manual on DOH investigations and hearings).

Did you know that you can obtain continuing education units (CEUs) just for attending a Board of Nursing meeting? You can receive up to eight hours of CEUs for this. Just be sure to sign in on the sign-in sheet on the table in or outside the meeting room in order to record your attendance and obtain a CEU certificate.

II. PUBLIC NOTICE

Board meetings are open to the public. Notice of meetings are published in the Florida Administrative Weekly. A draft agenda is available, on the board website, at least one week before the meeting and for public inspection during the Board meeting. Due to the fact that the Board's meetings are quasi-judicial meetings the public is requested to refrain from applause, booing or other emotional outbursts. There are rare occasions in which the Board and its members will enter an executive session, this is a non-public session, to discuss issues which are confidential.

In addition to Board meetings being open to the public, a court reporter prepares a legal record of the proceedings which take place during Board meetings. The court reporter transcribes the Board meetings for later use by the public. The court reporter also administers the oath to respondents and witnesses. Board meetings are also recorded on an audio tape in order to prepare meeting minutes. The meeting minutes are also open to the public.

You may obtain information, updates, agendas for future meetings, minutes from past meetings, a schedule of the times, dates and locations of future meetings and other information on the Board of Nursing on its website at:

http://www.doh.state.fl.us/mqa/nursing/nur_updates.html

You may contact the Board of Nursing (as of July 2008) at:

Florida Board of Nursing
4052 Bald Cypress Way, Bin C-02
Tallahassee, Florida 32399
Telephone: (850) 245-4125
Telefax: (850) 245-4172
e-mail: MQA_Nursing@doh.state.fl.us

III. ORGANIZATION OF THE BOARD OF NURSING

The business of the Board revolves around committee reports, staff and counsel reports, review of licensure and examination applications and discipline for violation of the Florida Nurse Practice Act, Board rules and other laws. Committee meetings typically occur on Wednesday evening and Thursday morning. The major committees of the Board of Nursing include: Practice, Legislative, Education, Continuing Education, ARNP, CNA Council and Credentials.

The full Board of Nursing meets on Thursday afternoon to hear committee reports and other board business and on Friday the Board meets to hear discipline cases. The individuals who are most active at the Board meetings are the chair, vice chair, board members, board counsel, prosecuting attorneys, IPN and the executive director.

A. CHAIR/VICE CHAIR

The chair is responsible for the organization and running of the Board meetings. The agenda is prepared by staff but the Chair may alter or reorganize the sequence of issues. The Chair seeks to keep the board on task and often summarizes discussion. Unlike some organizations, the Chair is a full member of the Board and is required to vote on all issues, unless the Chair is recused because she has a conflict of interest on the issue in which she is voting on. Just like any other member of the Board the Chair may make motions and second motions of others. The Chair will also seek clarification from counsel, board members, staff and others if requested. The Vice Chair performs these duties in the absence of the Chair.

B. BOARD MEMBERS

Members of the Board are required to vote on all issues, unless they are recused because of a conflict of interest. A Board member who sits on a probable cause panel may have already heard some evidence in disciplinary cases and, therefore, that member is automatically recused from voting on the case when it appears before the full Board. Board members review around 35,000 pages of scanned documents on CD-ROM prior to a Board meeting; documents received after the CD is made are distributed in paper form prior to the meeting. The documents typically included in the CD are applications for licensure, administrative complaints against an individual, investigative reports, orders, stipulations and other records. Orders are legal documents filed by the Board to take action against an applicant or licensee. A stipulation is a tentative agreement between the prosecuting attorney and the respondent; however, the Board must approve a stipulation before it can take effect. Board members determine severity of discipline using established guidelines; the cost of investigation is always included.

C. EXECUTIVE DIRECTOR

The Executive Director is the person responsible for the functioning of the Board office. The office staff prepares the agenda in concert with counsel and prosecuting attorneys, organizes and schedules the meetings and facilities, publishes notices, provides public copies of documents and maintains records of proceedings. The staff also processes applications for licensure or examination, maintains disciplinary files, reviews applications for new nursing programs, monitors statistics and prepares reports as requested. Other administrative and support staff may be present during the Board meetings.

D. BOARD COUNSEL

An Assistant Attorney General serves as legal counsel to the Board. Counsel responds to requests from the Chair to clarify requirements in Florida laws and rules which may affect the Board decisions. Counsel prepares draft documents for Board review, including proposed rules. Counsel will also inform the Board members of possible legal issues or implications of various courses of action being contemplated. Often, several different sections of laws may affect a decision and the discussion may become confusing. After the meeting, Counsel will prepare the final orders and other documents that are to be filed and sent to respondents.

E. PROSECUTING ATTORNEYS

These attorneys from Medical Quality Assurance (MQA) Enforcement (sometimes called "Prosecution Services Unit") review all disciplinary cases and prepare materials for Board review. Administrative complaints outline the alleged violations of the Florida Nurse Practice Act, rules of the Board and other laws. Investigative reports provide information from witnesses, records and others about the situations described in the administrative complaint.

If the respondent selects an informal hearing before the Board, the prosecuting attorney reads a summary of the administrative complaint and provides legal notification of procedures followed in notifying

the respondent. However, if you choose an informal hearing, you are agreeing that all facts in the administrative complaint are true and you are guilty of the allegations; the only issue left undecided is what your punishment is to be. This is the equivalent of a guilty plea or a no contest plea in a court of law. You may have good defenses that could be raised in a formal hearing and you have procedural rights which may result in dismissal of the case. When in doubt, you should always request a formal hearing.

Please see the separate chapter in this Manual on disciplinary hearings.

Remember, even if you have signed the election of rights form and waived your right to a formal hearing and requested an informal hearing, **if you get to the Board of Nursing meeting and change your mind, tell them that you are contesting the facts of the case, that you are contesting your guilt and that you want to withdraw your decision to have an informal hearing.** It is very important that you do this if you are really innocent.

Sometimes a stipulation (also called a settlement agreement, and which is similar to a plea bargain in a criminal case) is agreed to between the parties. The Board must still approve the stipulation before it becomes final. If the Board of Nursing rejects a stipulation you have agreed to, it may make you a counter-offer that contains more punishment. Always ask for time (at least a week) to think about the counter-offer. If the Board rejects the stipulation, you will then have the right to a formal administrative hearing to determine your guilt or innocence. You may want to do this.

If a respondent disputes the facts of a case, for example, if the Respondent wants to argue that he is really innocent of the charges, then a hearing before an administrative law judge (ALJ) will be held. When in doubt, you should always request a formal hearing.

Please see the separate chapter in this Manual on formal administrative hearings.

The ultimate findings of the ALJ after the formal hearing will be sent to the Board for final action.

F. RESPONDENTS

There are two typical respondents that appear before the Board. The first type of respondent is an applicant for licensure or examination. These persons may have discipline in another state, positive findings during criminal background screening, deficiencies in education or other credentials. The Board reviews these cases to determine if the applicant can be approved for licensure or examination. If your application is going to be heard at a Board meeting it would be extremely wise to appear before the Board, should they want to ask you any questions, with a qualified attorney certified in health law.

The second type of respondent that typically appears before the Board is a licensee who has had a complaint filed against them for violation of the Nurse Practice Act, rules of the Board or other laws and rules. Some respondents may be required to appear before the Board; however, in most cases the choice is up to the respondent. An attorney may appear for the respondent; if the respondent chooses to be represented by an attorney it is best to have an attorney who has been certified in health law and has represented other nurses in disciplinary proceedings before. A respondent may also bring a witness to appear on their behalf. All respondents and witnesses are sworn under oath.

G. INTERVENTION PROJECT FOR NURSES (IPN)

Representatives from IPN are present Board meetings to provide reports on individuals enrolled in the program. In addition, if the Board orders a respondent to be evaluated by IPN, information about the process is immediately available. IPN provides evaluations and consultant services for nurses or candidates for licensure. Most services revolve around drug and alcohol abuse but may also include mental health or behavioral problems and psychological testing.

See separate chapter in this Manual for more detail on IPN.

IV. CONCLUSION

The Board of Nursing is required to hold all of its meetings in a manner which is open and accessible to the public. These Board meetings revolve around committee reports, staff and counsel reports, issues of interest to nurses, nursing practice issues, review of licensure and examination applications and discipline for violations of the Florida Nurse Practice Act, Board rules and other laws and regulations.

You will learn quite a lot about your profession and how it is governed in the state of Florida by attending a Board of Nursing meeting. There is bound to be one near you soon.

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