



OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION  
2017-668A

Kim Glazier, Executive Director  
Oklahoma Board of Nursing  
2915 N. Classen Blvd., Ste. 524  
Oklahoma City, Oklahoma 73106

September 6, 2017

Dear Executive Director Glazier:

This office has received your request for a written Attorney General Opinion regarding agency action that the Oklahoma Board of Nursing intends to take pursuant to consent agreement in Board case 6.004.18. The licensee in this case is licensed as a registered nurse (RN) and a licensed practical nurse (LPN). The licensee's LPN license lapsed on August 1, 1989 and the RN license lapsed on April 1, 2006. The proposed action of the Board is to grant the licensee's RN reinstatement application. The Board has further determined that the licensee's RN license is temporarily suspended upon reinstatement pending the licensee's acceptance into the Board's Peer Assistance Program (PAP) within 60 days of reinstatement. The Board has also determined that if the licensee is not accepted into the PAP within 60 days of reinstatement, or having been accepted, is terminated or defaults from the PAP, then the licensee's RN will be revoked for 2 years from the date of termination/default from the PAP. Furthermore, the Board has determined that if the licensee's license is revoked under these circumstances, then the licensee must meet the Board's Guidelines for Individuals Requesting Reinstatement After Suspension, Surrender or Revocation for Misappropriation or Misuse of Drugs/Alcohol. Additionally, if the licensee's license is revoked under these circumstances, the licensee must also pay an administrative penalty in the amount of \$2,000. The Board has further determined that upon licensee's reinstatement after revocation under these circumstances, the licensee's license will be temporarily suspended pending readmission to the PAP.

In October 2013, the licensee was charged with Possession of Controlled Substance (methamphetamine), a felony, and Possession of Controlled Substance Paraphernalia, a misdemeanor. The Court ordered the licensee to the Proposition 36 Program with 3 years of probation and also required the licensee to pay Court Costs. In June 2015, before the California Board of Registered Nursing Department Consumer Affairs (California BON), the licensee entered into a Stipulated Settlement and Disciplinary Order (Order) for the 2013 felony conviction. The California BON Order required the licensee to comply with the California BON Probation program, work under supervised practice guidelines and to obtain a Mental Health Evaluation to determine the licensee's capabilities. The licensee has not completed the terms of the California BON Order.

In October 2015, before the Texas Board of Nursing (Texas BON), the licensee entered into an Order of the Board to Voluntarily Surrender the licensee's Texas practical nurse and RN licenses. In January 2017, the licensee submitted to the Board a completed Application for Reinstatement to practice as a

RN. The licensee falsified the Application by failing to disclose the Texas BON Order. The licensee has requested a referral to the Board's PAP.

The Oklahoma Nursing Practice Act, 59 O.S.2011 & Supp.2016, §§ 567.1– 567.26, provides that “[t]he education, certification and licensure of . . . nurses . . . is . . . subject to regulation and control by the [Board].” 59 O.S.2011, § 567.2(A). To that end, the Act provides that “[a] licensee . . . who applies for reinstatement of a license . . . shall meet such requirements as the Board may prescribe in its rules.” 59 O.S.Supp.2016, § 567.7(B). The Act authorizes the Board to impose discipline when a nurse “[i]s guilty of deceit or material misrepresentation in procuring or attempting to procure [] a license to practice . . . nursing,” “[i]s guilty of a felony, or any offense reasonably related to the qualifications, functions or duties of [nurses], or any offense an essential element of which is fraud, dishonesty, or . . . moral turpitude,” “[i]s intemperate in the use of alcohol or drugs, which use the Board determines endangers or could endanger patients,” “[i]s guilty of unprofessional conduct,” has “[v]iolated a rule promulgated by the Board . . . or a state or federal law related to the practice of . . . nursing . . . or a state or federal narcotics or controlled dangerous substance law” or “[h]as had disciplinary actions taken against the individual’s registered or practical nursing license . . . in this or any state, territory or country.” *Id.* § 567.8(B)(1)(a), (2), (4), (7), (9-10). The Board rules provide that “unprofessional conduct” includes, but is not limited to, “falsifying documents submitted to the Board of Nursing” and “conduct detrimental to the public interest.” OAC 485:10-11-1(b)(3)(E), (H). The disciplinary actions the Board is authorized to take against a nurse that violates the Act include, but are not limited to, “[d]eny[ing], revok[ing] or suspend[ing]” a license, “assess[ing] administrative penalties” and “otherwise disciplin[ing] licensees.” 59 O.S.Supp.2016, § 567.8(A)(1)(a-b), (2-3); *see also* OAC 485:10-11-1(a). Further, the Act also provides that “[a] nurse may apply to participate in the [PAP] by choice or may be directed to apply to the [PAP] by an order of the Board. In either case, conditions shall be placed on the nurse’s license to practice nursing during the period of participation in the [PAP].” 59 O.S.Supp.2016, § 567.17(K); *see also id.* § 567.17(H), (I). Finally, the Act authorizes the Executive Director of the Board to enter “[a]greed disciplinary orders requiring an applicant or licensee to enter and comply with the [PAP].” *Id.* § 567.4(F)(2), (3)(b). The Board may reasonably believe that its proposed action is necessary to deter future violations and to protect patient welfare by ensuring that nurses are working substance free.

It is, therefore, the official opinion of the Attorney General that the Oklahoma Board of Nursing has adequate support for the conclusion that this action advances the State of Oklahoma’s policy to protect the public health, safety, and welfare by ensuring nurses provide adequate care uncompromised by substance abuse and meet minimal standards of professional conduct.



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