



When the State Board Calls: Part I Guidance from Nurse Attorney, Latonia Denise Wright

Diane E. Scott, RN, MSN

Every week, Latonia Denise Wright, R.N., B.S.N., J.D, is contacted by a nurse seeking advice about a letter or a phone call received from a State Board of Nursing or Attorney General's Office investigator. The investigation often surrounds an allegation concerning an incident that may have occurred several months or years before the nurse is contacted.

As an attorney licensed in Ohio, Kentucky, and Indiana, Ms. Wright has often witnessed a nurse's anxiety and panic surrounding State Board disciplinary investigations. We recently spoke with Ms. Wright, a former member of the Board of Directors of the Center for American Nurses, to help understand what to do when the State Board calls.

The Center: Why would a State Board investigate a nurse?

Ms. Wright: Many nurses may not fully realize that the role of any Board of Nursing is to protect the public from unsafe nursing care. The vast majority of nurses' only interaction with their State Board is when they are first licensed and when it is time for their license renewal. It comes as a surprise for many nurses that their State Board of Nursing was not established to be the advocate and protector of nurses in their state, but to be guardians of the public.

The States Board of Nursing have the admirable, and often daunting task, of being entrusted to look after the public and have the responsibility to investigate the behavior of any nurse who may have allegedly violated their nurse practice act. While the process varies state-to-state, a State Board will investigate a nurse if the Board is informed of any potential violation of the statutes and regulations.

A nurse may be reported by the public, a peer or an employer. In fact, the majority of nurses practice in mandatory reporting states where employers are required to report suspected or alleged violations of the Nurse Practice Act and/or Board of Nursing regulations to the Board of Nursing.

The Center: When should a nurse contact an attorney?

Ms. Wright: While representing oneself is a nurse's right in our justice system, it is difficult to maintain one's composure, remain objective, and act in one's own best interest at all times when proceeding as your own representative. Many times, a nurse will only seek legal representation after there has been irrevocable action against their licenses to practice or after the disciplinary investigation has gone off course.

If a nurse is reported to the State Board of Nursing or if an investigator calls them, it behooves them to consult with a nurse attorney who practices administrative law in their state before they provide the Board with any information via a phone interview, written statement or meet with an investigator.

Most nurses are so staggered by the initial phone call from the Board, that they do not fully comprehend the ramifications of their responses. Although the investigator's conversations may be described as "routine" and may be rather short in length, a nurse still needs to be cautious of every response and can reserve the right to representation prior to answering any questions.

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If a nurse has spoken with the state board without speaking to an attorney, it is very important that the nurse seeks legal advice prior to signing any agreements or orders. A nurse needs to fully understand the terms and provisions in any agreement or order prior to signing the document. A nurse can hire legal representation at any point in the investigative and adjudicative process or even before the actual complaint is filed with the Board of Nursing if the nurse knows or suspects a complaint will be filed.

The Center: What about the cost of an attorney?

Ms. Wright: A nursing license is how a nurse supports her family: it is her livelihood. Making an informed decision in any matter that impacts a nurse's livelihood and State Board of Nursing disciplinary investigations and adjudications can impact a nurse's license as well as her career.

While professional legal advice is not free, the financial, emotional, employment and professional ramifications of being investigated and facing action against a license overwhelmingly supports the expense of retaining an attorney. In many cases, a one-time phone call or in-person consultation at the cost of a few hundred dollars can help determine the need for further consultative services. What many nurses do not realize, is that their own professional liability insurance may pay for legal counsel in many cases.

The Center: Should a nurse carry their own liability insurance?

Ms. Wright: One significant means to manage exposure to liability for healthcare professionals is to purchase professional liability insurance. While many nurses are under the assumption that their hospital's malpractice policy provides adequate protection, I cannot emphasize enough that an employer's liability policies are meant to protect the facility.

By owning a professional liability insurance policy, a nurse is protected in the event they are named as a defendant in medical malpractice and in the event a complaint is filed against their license with the Board of Nursing.

When purchasing a policy, make sure that it covers attorney fees and costs in State Board of Nursing disciplinary investigations. Nurses should consider purchasing an insurance policy for an insurer that writes policies for nurses and other licensed healthcare professional as this typically may include coverage for professional liability, licensure defense, and deposition representation.

The Center: In closing, how do I find a licensed attorney?

Ms. Wright: Contact your state nurses association for a referral to a nursing licensure attorney (www.nursingworld.org), or contact The American Association of Nurse Attorneys (www.taana.org.)

This Nursing that Works article is not intended to take the place of any professional legal advice. For more information, please contact your State Board of Nursing, state nurse's association, or contact a licensed attorney in the state in which you are licensed.

LaTonia Denise Wright, R.N., B.S.N., J.D. is licensed to practice law in Ohio, Kentucky, and Indiana and is a Registered Nurse in Ohio. The majority of her law practice involves defending nurses in licensure matters. She currently practices as an RN with Interim HealthCare in Cincinnati, Ohio on a per diem basis. Her blog about the law, legalities, and legal issues in nursing is www.advocatefornurses.typepad.com

The next issue of Nursing That Works will present an interview with an Executive Director of a State Board of Nursing.



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