

Development of Sanctioning Guidelines for Public Discipline in Nursing Regulation: The North Carolina Board of Nursing Journey



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Area of Opportunity in Nursing Regulation

State legislatures grant Boards of Nursing (BONs) authority to provide for the enforcement of the rules set forth by the BON. However, determining consistent, appropriate sanctions for substantiated violations of the Nursing Practice Act is challenging without a defined frame of reference.

The North Carolina Board of Nursing (NCBON) took on the challenge of developing a guideline for the implementation of disciplinary sanctions for those substantiated violations considered a risk to the public. Board members decided to embrace the Just Culture philosophy, a systematic method that can be used to increase patient safety. Just Culture holds individuals accountable for reckless behavior or repeated behavior that poses increased risk to patients, but does not expect individuals to assume accountability for system flaws over which they had no control (The Ohio Board of Nursing, 2010).

A Just Culture shifts the generally accepted notion to find blame in the last person in contact with the patient prior to the error occurring, towards examining the circumstances preceding, during, and after an error is committed while also examining the behaviors of the individuals involved in the error (Outcomes Engenuity, 2014). The Just Culture philosophy challenged North Carolina nurse regulators to focus more attention on licensees' behavioral choices rather than on the patient outcomes that may result from those choices.

To fully embrace this objective, the NCBON needed to reflect on its current



approach to imposing discipline sanctions and make necessary process revisions that protect the citizens of North Carolina, and authorized board staff to investigate the possible use of sanctioning guidelines as an option to improve disciplinary processes.

A Brief Review of the Literature

There have been few studies examining disciplinary actions by BONs and there is little research involving the development and use of sanctioning guidelines as part of the discipline process for BONs. There is, however, information available highlighting the pervasive culture of blame within the health care industry when errors occur. Dr. Lucian Leape's historical congressional testimony highlighted the need for health care to move past a punitive system (Leape,

2000). Khatri, Brown, and Hicks (2009) also assert that measured steps are needed for organizations to move from a blame culture to a Just Culture given that medical errors and poor quality of care result from this punitive culture.

A search of several databases revealed no information about sanctioning tool development for the nursing regulatory community, therefore the search was expanded to include other occupations.

Relevant information on sanction guideline development was discovered within the legal community. The ABA Model Rules for Lawyer Disciplinary Enforcement are used by state supreme courts and bar associations in reviewing their disciplinary systems, and have been used by other occupations as a frame of

reference in crafting their own disciplinary programs (American Bar Association [ABA] 2005). The Model Rules state the following factors are taken into consideration when imposing sanctions: whether a duty to a client, to the public, to the legal system or to the profession was violated; whether the action was intentional or negligent; the amount of the actual or potential injury; and the existence of any aggravating or mitigating factors (ABA, 1989, Rule 10 #3).

Development of Sanctioning Guidelines for Public Discipline in North Carolina

NCBON staff conducted an internal review of disposed cases to get baseline information regarding sanctioning practices of the Board, and reviewed sanctioning guidelines from California, Washington, Oregon and Texas. NCBON staff were able to analyze these established protocols in conjunction with the information available from the ABA to

determine commonalities, structure and feasibility of replication within NCBON legislative mandates.

Phase One

Board staff performed a three-year review (years 2007, 2008 and 2009) of disciplinary actions imposed by the NCBON, according to violation (law and rule citations) and sanction(s) applied. Board staff then extrapolated common factors applicable in many cases involving the same or similar law and rule violations. For example, in a diversion (theft) of controlled substances case, it was determined that nurses were more strictly sanctioned if they had also substituted the patient's medication. The first phase focused on developing a guideline to address licensee mishandling of controlled substances and discrepancies in the documentation of controlled substances. These violations accounted for a significant portion of



complaints and warranted immediate attention due to the risk to the public.

Similarities were noted among the common factors considered in sanctioning decisions when guidelines from the four regulatory bodies were reviewed. For example, the actual or potential harm to the public, the licensee's prior disciplinary record, time elapsed since the act(s) occurred and licensee admissions of wrongdoing were factors for at least three of the four state BONs in determining appropriate sanctions. The sanctioning guideline tools are developed so that each factor or criterion is independent of the others, with no weight or preference given to a specific criterion. Criteria are grouped together by the potential risk for harm to the public, categorized as low, moderate or high risk. In the substitution example noted previously, it was determined that the factor of "substitution" should fall within the highest risk category.

When reviewing previous cases involving substitution of medications, board staff determined that some similarities existed among the sanctions issued to the nurses engaged in this conduct. Based on this information, NCBON offered suggestions for sanctions that correspond to the risk-taking behavior of the licensee for each category. Of course, as no two cases are alike, provisions to account for the circumstances unique to each case were needed. Board staff chose to allow for the evaluation of non-defined aggravating and mitigating factors that may influence the sanctioning decision. For the purposes of the NCBON sanctioning guidelines, aggravating and mitigating factors are those circumstances that do not occur with such frequency as to be considered an independent factor for consideration with each case review; however, they provide information that is relevant to the case and influence the reviewers' decision-making in the sanction rendered. Aggravating factors present in a case review may influence the evaluator to increase the sanction offered, whereas mitigating factors may be indicative that a lesser sanction is more appropriate.



Phase Two

Once the initial sanctioning guideline was developed, board staff began to use the tool on a limited basis in the investigation and evaluation of reported cases involving allegations of diversion of, or inaccurate documentation of, controlled substances. This introductory phase allowed for controlled use of the guideline but provided feedback by a limited number of users with regard to clarity of the factors, ease of use and applicability to the cases reviewed. These individuals consulted each other to make sure that each reviewer was consistently using the guidelines prior to offering a settlement to the licensee based on the sanction recommended in the guideline. As the pilot phase of the project began, board staff continued to work on the development of guideline tools for practice-related and other misconduct violations, resulting in 15 sanctioning guidelines covering a variety of practice violations, including abandonment, neglect and exceeding scope of practice.

Phase Three

The third phase of tool implementation revolved around the use of the sanctioning guideline tools with senior staff in conjunction with training on tool use for all investigators. Round table reviews of previously disposed cases were conducted as a forum to introduce investigative staff to the applicable and relevant factors and to ensure inter-rater reliability in the use of the tool. Having knowledge of relevant guideline factors allowed investigators to incorporate the information into their investigative plans for future complaint investigations. Additionally, the sanctioning guidelines were approved by the NCBON board members which granted board investigators authority to utilize them for Published Consent Orders (stipulated agreements that may be offered if a nurse acknowledges a violation of the Nursing Practice Act and would like an expedited settlement of a non-contested practice complaint).

Results

Implementation of these sanctioning guidelines resulted in decreased cycle times for case disposition, decreased numbers of contested cases and decreased costs associated with administrative hearings. In addition,

consistency in sanctions rendered, based on allegation and relevant factors, increased and efficiencies were gained through effective resource allocation.

By virtue of having an established guideline in place, all reviewers have at their disposal a tool to help direct their evaluation of case criterion in a standard format which promotes fairness for licensees and helps assure that sanctions are not rendered arbitrarily. Tool use may also reinforce the defensibility of rendered sanctions while maintaining the need for flexibility in the disposition of cases through consideration of case-specific circumstances. The guidelines reduce evaluator bias by providing a forum for which common factors are consistently applied for similar violations and guideline use allows for transparency in decision-making.

In addition, appreciable time and financial savings attributable to case resolution through Published Consent Orders (PCOs) for licensees were achieved. Between the years of 2009 and 2011 there was a 164 percent increase in the use of the PCOs. There was a 42 percent decrease in the cycle time (investigation time) required to resolve all cases resulting in formal discipline in the year 2011 when compared to cycle times in the year 2009. This reduction was attributed to the increased use of PCOs made possible by the sanctioning guidelines. Offers of resolution could be made much earlier in the investigative process without the need for additional staff involvement, thereby promoting efficient use of Board resources.

Implications for Future Use

Implications for use of consistent, evidence-based sanctioning guidelines are evident at the state and national levels. BONs committed to providing effective regulatory enforcement can assure that these guidelines will be applied and considered equitably in sanctioning decisions. Moreover, use of the sanctioning guidelines may provide opportunities within and across BONs for shared learning and benchmarking by providing a common frame of reference in disciplinary processes, thus promoting consistency in the disciplinary processes of multiple jurisdictions and increased uniformity in nursing regulation.

The NCBON has and continues to promote a Just Culture where open communication of system breaches and learning opportunities

are celebrated within a framework that holds licensees accountable for risk-taking behavior. The tool they developed aligns the investigative and disciplinary process with the current Mission, Vision and Values of the NCBON.

Many thanks to the remaining members of the NCBON PCO team, Carrie Linehan, Brian Stewart, Kathleen Privette, and Kathy Chastain, for their steadfast commitment to public protection and work developing the sanctioning guidelines.

REQUIRED ONLINE READING

The Just Culture in Nursing Regulation Instruction Booklet provides supporting evidence for sanctioning guidelines. The location of the booklet can be found in the "Earn CE Credit" section.

REFERENCES

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“Development of Sanctioning Guidelines for Public Discipline in Nursing Regulation: The North Carolina Board of Nursing Journey.” (1 CH)

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