

APA-1  
11/96

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 610 Department or Agency Alabama Board of Nursing  
Rule No. 610-X-8  
Rule Title Disciplinary Action  
         New   X   Amend          Repeal          Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

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Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

\*\*\*\*\*

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer *W. K. ...*

Date April 21, 2014

DATE FILED  
(STAMP)

APA-2  
11/96

**ALABAMA BOARD OF NURSING**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Board of Nursing

**RULE NO. & TITLE:** Chapter 610-X-8, Disciplinary Action

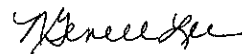
**INTENDED ACTION:** The Alabama Board of Nursing proposes to amend the Chapter specific to disciplinary action.

**SUBSTANCE OF PROPOSED ACTION:** The Alabama Board of Nursing proposes to amend Chapter 610-X-8, Disciplinary Action. A copy of the proposed amended Chapter may be found on the Board's web site, [www.abn.alabama.gov](http://www.abn.alabama.gov), under "laws" and then "proposed rule changes."

**TIME, PLACE, MANNER OF PRESENTING VIEWS:** Written or oral comments will be received by the Board of Nursing until 4:30 P.M. on Wednesday, June 4, 2014. Verbal or written comments be directed to N. Genell Lee, Executive Officer, at P.O. Box 303900, Montgomery, AL 36130-3900 or via electronic mail at [Genell.Lee@abn.alabama.gov](mailto:Genell.Lee@abn.alabama.gov) or via telephone at 334-293-5210. A public hearing will be held on Friday, May 16, 2014 at 10:00 A.M. if requested no later than Monday, May 12, 2014.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:**  
The record closes at 4:30 P.M. on Wednesday, June 4, 2014.

**CONTACT PERSON AT AGENCY:** N. Genell Lee, Executive Officer.



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Executive Officer

# ALABAMA BOARD OF NURSING

## Chapter 610-X-8

### Disciplinary Action

#### 610-X-8-.01 Definitions.

- (1) Abandonment: Acceptance of a patient assignment, thus establishing a nurse-patient relationship, and then ending the nurse-patient relationship without giving reasonable notice to supervisory personnel so that others can make arrangements for continuation of nursing care.
- (2) Administrative complaint: A legal document which contains notice of the time and place of an administrative hearing; contains a statement of the charges against the applicant, registered nurse, licensed practical nurse, advanced practice nurse, continuing education provider, or nursing education program; and complies with the notice provisions for contested cases as set forth in the Alabama Administrative Procedures Act.
- (3) Assessment, Comprehensive: the systematic collection and analysis of data including the physical, psychological, social, cultural and spiritual aspects of the patient by the registered nurse for the purpose of judging a patient's health and illness status and actual or potential health needs. Comprehensive assessment includes patient history, physical examination, analysis of the data collected, development of the patient plan of care, implementation, and evaluation of the plan of care.
- (4) Assessment, Focused: An appraisal of a patient's status and specific complaint through observation and collection of objective and subjective data by the registered nurse or licensed practical nurse. Focused assessment involves identification of normal and abnormal findings, anticipation and recognition of changes or potential changes in patient's health status, and may contribute to a comprehensive assessment performed by the registered nurse.
- (5) Board-Acceptable Licensed Healthcare Provider: A licensed healthcare provider who has been accepted, in advance, by Board staff to conduct a required evaluation of a licensee for purposes of reinstatement of a Board-Lapsed license.
- (6) Board-Lapsed License: An Order of the Board that lapses a license until identified conditions are met and the license is reinstated by Order of the Board.
- (7) Dual Relationship: any time a licensed nurse interacts with a patient outside the nurse-patient relationship.
- (8) Fine: A monetary penalty imposed by the Board.
- (9) Letter of Admonishment: A letter from the Board that addresses the areas of concern over the reported conduct and notifies the registered nurse, licensed practical nurse or applicant for licensure that the case has been closed without discipline.
- (10) Letter of Closure: A letter from the Board that notifies the registered nurse, licensed practical nurse or applicant for licensure that the case has been closed without discipline.
- (11) May: power, privilege or right retained by the Board.
- (12) May not: prohibition.

- (13) Negligent: Failure to exercise the care required by the applicable standard of care.
- (14) Probation: The monitored practice of nursing which permits the nurse to continue to practice nursing pursuant to specified conditions as set forth by the Board.
- (15) Professional Boundary: behavior of the licensed nurse in maintaining a therapeutic relationship with a patient for the patient's benefit rather than behavior that lessens the patient's care and shifts the focus to the licensed nurse.
- (16) Reprimand: A formal censure by the Board.
- (17) Revocation: The withdrawal of the license by Board action.
- (18) Shall: duty, requirement, or condition precedent.
- (19) Suspension: The temporary withdrawal of the license by Board action.
- (20) Voluntary Surrender: The voluntary relinquishment of a license that has the force and effect of revocation.
- (21) Willful: Commission of an act or omission when the licensed nurse or applicant knows or reasonably should know that the act or omission violates the Nurse Practice Act.

**Author:** Alabama Board of Nursing

**Statutory Authority:** Code of Alabama, 1975, § 34-21-2(~~h~~)(j)(1), 34-21-25.

**History:** Effective September 29, 1982. **Repealed and Replaced:** Filed January 29, 2002. Effective March 5, 2002. **Amended:** Filed July 22, 2005. Effective August 26, 2005. **Repealed and Replaced:** Filed May 21, 2010. Effective June 25, 2010.

**Amended:** Filed August 19, 2011. Effective September 23, 2011. Filed April 21, 2014.

### **610-X-8-.02 Grounds for Denial of Initial Licensure.**

The following may be grounds for denial of an application for initial licensure and/or temporary permit by examination or endorsement:

- (1) Failure to meet any requirement or standard established by law or by rules and regulations adopted by the Board.
- (2) Engaging in fraud, misrepresentation, deception, or concealment of a material fact in applying for or securing licensure or taking any examination required for licensure.
- (3) A course of conduct that would be grounds for discipline under Rule 610- X-8-.03.
- (4) Having disciplinary action pending or having had a license, registration, or certification for any health-related profession denied, conditionally issued, fined, reprimanded, censured, restricted, limited, placed on probation, suspended, revoked, voluntarily surrendered, or otherwise encumbered in any state, territory or country.
- (5) Having been court-martialed or administratively discharged by a branch of the United States Armed Forces for any act or conduct that would constitute grounds for discipline in ~~this state~~ Alabama under Rule 610-X-8-.03.
- (6) Having engaged in conduct that is inconsistent with good moral character.
  - (a) The decision as to whether the applicant has engaged in conduct that is inconsistent with good moral character is within the discretion of the Board of Nursing.
  - (b) In determining whether the applicant has engaged in conduct that is inconsistent with good moral character, the Board may consider the applicant's criminal history,

pattern of illegal conduct or disregard for the law, or other evidence bearing on the applicant's fitness and capacity for practice as a licensed nurse.

(7) Non-compliance with a monitoring agreement or contract with an alternative to discipline program or order issued in another jurisdiction pertaining to any license, certification, or registration for a health-related profession.

~~(7)~~ (8) Any other reasons authorized by law.

**Author:** Alabama Board of Nursing

**Statutory Authority:** Code of Alabama, 1975, §§ 34-21-21, 34-21-25.

**History:** Effective September 29, 1982. Amended April 27, 1984. **Repealed and**

**Replaced:** Filed January 29, 2002. Effective March 5, 2002. **Repealed and Replaced:** Filed May 21, 2010. Effective June 25, 2010. Proposed amended rule filed April 21, 2014.

### **610-X-8-.03 Grounds for Discipline of a License or Denial of Renewal or Reinstatement.**

The Board may reprimand, fine, probate, suspend, revoke and/or otherwise discipline any registered nurse or licensed practical nurse upon proof that the person:

(1) Is guilty of fraud or deceit in procuring or attempting to procure a license by:

(a) Filing false, forged or altered documents or credentials, including required continuing education documentation.

(b) Misrepresenting or falsifying facts in applying for original licensure, renewal, reactivation, or reinstatement of a license.

(c) Having another person appear for a licensing or certification examination.

(2) Has been convicted of a felony.

(3) Is guilty of a crime involving moral turpitude or of gross immorality that would tend to bring reproach upon the nursing profession.

(a) For purposes of this rule a person is guilty of a crime if the person:

(i) Has been convicted of the crime.

(ii) Regardless of court disposition, has entered a plea of guilty, no contest, nolo contendere, not guilty by reason of insanity, or other similar plea, or has stipulated that a prima facie case exists that would support conviction.

(b) For purposes of this rule, a crime involving moral turpitude or of gross immorality that would tend to bring reproach upon the nursing profession is any crime, whether felony or misdemeanor, that involves:

(i) Drugs.

(ii) Theft.

(iii) Lewdness.

(iv) Any sexual offense.

(v) Abuse.

(vi) Violence.

(vii) Fraud.

(viii) Any other conduct detrimental to the public's health, safety or welfare.

- (4) Is unfit or incompetent due to the use of alcohol, or is addicted to the use of habit-forming drugs to such an extent as to render the registered nurse or licensed practical nurse unsafe or unreliable as demonstrated by one or more of the following:
- (a) Testing positive for alcohol and/or unauthorized mood-altering drugs.
  - (b) Misappropriation or diversion of drugs from the workplace for self-use.
  - (c) Obtaining or attempting to obtain an unauthorized prescription by fraudulent means for self-use.
  - (d) A pattern of abuse or misuse of habit forming and/or mood-altering drugs or alcohol.
  - (e) Impairment while on duty due to alcohol or the use of illegal, unauthorized, or duly authorized mood-altering drugs.
  - (f) Refusal to submit to drug screen ~~for cause~~.
  - (g) Submission of or attempt to submit a diluted, adulterated, or substituted specimen for drug testing.
  - (h) The use of alcohol or habit forming or mood altering drugs to such an extent that medical or psychiatric treatment, rehabilitation, or counseling is sought by the licensed nurse or is recommended by a legally authorized prescriber.
  - (i) Admitting to a substance use disorder.
- (5) Is unable to safely practice nursing with reasonable skill and safety to patients by reason of illness, inebriation, excessive use of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition, as demonstrated by one or more of the following:
- (a) Testing positive for alcohol and/or unauthorized mood-altering drugs.
  - (b) Misappropriation or diversion of drugs from the workplace for self-use.
  - (c) Obtaining or attempting to obtain an unauthorized prescription by fraudulent means for self-use.
  - (d) A pattern of abuse or misuse of habit forming and/or mood-altering drugs or alcohol.
  - (e) Impairment while on duty due to alcohol or the use of illegal, unauthorized, or duly authorized mood-altering drugs.
  - (f) Refusal to submit to drug screen ~~for cause~~.
  - (g) Submission of or attempt to submit a diluted, adulterated, or substituted specimen for drug testing.
  - (h) The use of alcohol or habit forming or mood altering drugs to such an extent that medical or psychiatric treatment, rehabilitation, or counseling is sought by the licensed nurse or is recommended by a legally authorized prescriber.
  - (i) ~~Any conduct described in Alabama Board of Nursing Administrative Code Section 640-X-8-03(4) above~~ Admitting to a substance use disorder.
  - (j) More than one alcohol or drug-related arrest within a five year period.
  - (k) A mental or physical condition which renders the licensed nurse unable to safely practice nursing with reasonable skill and safety as demonstrated by one or more of the following:
    - (i) Conduct that poses a serious risk of harm to the licensed nurse or any other person.
    - (ii) Cognitive deficits that render a licensed nurse unable to exercise appropriate nursing judgment.
    - (iii) Impairment of functional capacity.
    - (iv) Inappropriate or disruptive behavior in the workplace.
    - (v) A judicial finding of incompetence.

(vi) Any other conduct in the workplace that suggests an inability to safely practice nursing with reasonable skill and safety to patients.

(6) Has been convicted of any violation of a federal or state law relating to controlled substances, including misdemeanor and felony offenses.

(7) Is guilty of unprofessional conduct of a character likely to deceive, defraud, or injure the public in matters pertaining to health, as demonstrated by one or more of the following:

(a) Failure to practice nursing in accordance with the standards adopted by the Board in Alabama Board of Nursing Administrative Code, Chapters 610-X-5, 610-X-6, 610-X-7, or 610-X-9.

(b) Practice beyond the scope of the individual licensed nurse's practice, as determined by, but not limited to:

(i) Educational preparation.

(ii) License status.

(iii) Advanced practice approval.

(iv) Collaborative practice agreements.

(v) State and federal statutes and regulations.

(vi) State and national standards appropriate to the type of practice.

(vii) Nursing experience.

(viii) Standardized procedures.

(ix) Knowledge, skills and ability to manage risks and potential complications.

(x) Required instruction and supervision.

(c) Failure to perform an assessment or evaluation of a patient's status.

(d) Failure to implement the plan of care or institute interventions that might be required to stabilize a patient's condition or to prevent complications.

(e) Failure to:

(i) Use appropriate nursing judgment.

(ii) Administer medications and treatments in a responsible manner.

(iii) Demonstrate competence in administering or carrying out patient care.

(f) Falsifying, altering, destroying, or attempting to destroy patient, employer or employee records.

(g) Abandoning or neglecting patients.

(h) Failure to respect or safeguard the patient's dignity, right to privacy, and confidential health information unless disclosure is required by law.

(i) Failure to maintain professional boundaries.

(j) Intentionally or negligently causing or permitting one or more of the following to a patient:

(i) Physical abuse.

(ii) Sexual abuse.

(ii) Emotional abuse.

(iii) Verbal abuse.

(iv) Willful harassment or intimidation.

(v) Financial exploitation.

(k) Permitting a dual relationship with a patient to disrupt, delay, or inappropriately influence the nursing care provided to that patient or any other patient.

(l) Exhibiting inappropriate or unprofessional conduct or behavior in the workplace.

- (m) Engaging in fraud, deceit, or misrepresentation in seeking employment, practicing, seeking to practice, or advertising by:
- (i) Falsification, alteration, or forgery of a temporary permit, identification card, license, advanced practice approval, or credentials.
  - (ii) Falsification or misrepresentation of credentials, licensure status, advanced practice approval, collaborative practice status, or educational background.
  - (iii) Forgery of educational documents.
  - (iv) Falsification, misrepresentation, or forgery of employment records.
  - (v) Falsification or misrepresentation of any information on an application for employment.
  - (n) Intentionally or negligently misrepresenting or falsifying facts in billing a patient or any public or private third party payor.
  - (o) Aiding, abetting, directing, or assisting an individual to violate or circumvent any law or rule intended to guide the conduct of a licensed nurse or any other licensed health care provider.
  - (p) Failure to ensure verification of current Alabama temporary permit, licensure, and credentials of nursing personnel for whom the licensed nurse is administratively responsible.
  - (q) Personal use of unauthorized or illegal drugs or substances, which includes taking medication prescribed for someone else.
  - (r) Testing positive for unauthorized or illegal mood-altering drugs or substances.
  - (s) A pattern of abuse or misuse of habit forming and/or mood-altering drugs or substances or alcohol.
  - (t) Practicing, attempting to practice, or continuing to practice when the licensed nurse is unable to perform with reasonable skill and safety due to the licensed nurse's mental or physical impairment resulting from:
    - (i) Alcohol.
    - (ii) Unauthorized, duly authorized, or illegal drugs or substances.
  - (u) Obtaining or attempting to obtain controlled drugs or substances without direction from a legally authorized prescriber or through fraudulent means.
  - (v) Furnishing or administering drugs or controlled substances to any person, without direction from a legally authorized prescriber.
  - (w) Misappropriation, diversion, or attempted misappropriation or diversion, of drugs or substances from the workplace.
  - (x) Refusal to submit to drug screen ~~for cause.~~
  - (y) Appropriating real or personal property of a patient, employer, or any other person or entity; or failing to take precautions to prevent misappropriation of real or personal property of a patient, employer, or any other person or entity.
  - (z) Failure to report illegal, substandard, unethical, unsafe or incompetent nursing practice or disciplinary action in any state, territory, country, or other jurisdiction.
  - (aa) Having a license, registration, or certification for any health-related profession denied, conditionally issued, fined, reprimanded, censured, restricted, limited, placed on probation, suspended, revoked, voluntarily surrendered, or otherwise encumbered in any state, territory, country, or other jurisdiction, or having been court-martialed or administratively discharged by a branch of the United States Armed Forces, for any act or conduct which would constitute grounds for disciplinary action in ~~this state~~ Alabama.



- (bb) Any act or omission which would constitute grounds for denial or termination of qualification to engage in advanced practice nursing.
- (cc) Violation of any provision of the Alabama Nurse Practice Act, the Alabama Board of Nursing Administrative Code, or any state or federal law pertaining to matters of health which is likely to deceive, defraud, or injure the public.
- (dd) Non-compliance with a monitoring agreement or contract with an alternative to discipline program or order issued in another jurisdiction pertaining to any license, certification, or registration for a health-related profession.

(8) Has willfully or repeatedly violated any of the provisions of Article 2 of the Alabama Nurse Practice Act, by:

(a) Failing to respond to official Board correspondence, including but not limited to:

(i) Requests for information.

(ii) Subpoenas.

(iii) Notices.

(iv) Annual Reports for nursing education, standardized procedures, and report of employing agencies.

(b) Practicing, seeking to practice, or attempting to practice professional, practical, or advanced practice nursing without an active license, temporary permit, or approval.

(c) Impersonating an applicant for licensure or another licensed practitioner or permitting or allowing another person to use the licensed nurse's nursing license or temporary permit.

(d) Continued violation of any statute or rule after notice by the Board.

(e) Failure to comply with any stipulated terms and conditions of any Board order, agreement, or contract.

(9) Failure of a registered nurse or licensed practical nurse who provides continuing education to comply with continuing education rules.

(10) Failure to repay scholarship funds awarded by the Board for postbaccalaureate graduate study.

(11) Payment of any fees or fines to the Board with a worthless check, invalid credit card, or by any other method that is not honored by the financial institution.

(12) Violation of Code of Alabama 1975, § Section 34-21-86, which addresses prescribing practices for certified registered nurse practitioners or certified nurse midwives; or any adverse action against a Drug Enforcement Administration certificate or certificate of qualification issued pursuant to Article 11 of the Alabama Uniform Controlled Substances Act.

(13) Any other reasons authorized by law.

**Author:** Alabama Board of Nursing

**Statutory Authority:** Code of Alabama, 1975, §§ 34-21-2~~(f)~~ (j)(1), 34-21-25, 34-21-86.

**History:** Effective September 29, 1982. Amended March 22, 1991. Amended March 24, 1985. Amended November 4, 1989. Amended November 18, 1997. Amended March 12, 1998. **Repealed and Replaced:** Filed January 29, 2002. Effective March 5, 2002. **Amended:** Filed July 22, 2005. Effective August 26, 2005. **Repealed and**

**Replaced:** Filed May 21, 2010. Effective June 25, 2010. Proposed amended rule filed April 21, 2014.

#### **610-X-8-.04 Investigation.**

(1) Upon self-disclosure or receipt of a written complaint alleging that a registered nurse or licensed practical nurse has violated a statute or rule by committing one or more of the actions specified as grounds for disciplinary action, the Executive Officer shall provide for an investigation by Board staff to determine if there is sufficient evidence to warrant disciplinary proceedings.

(2) When an investigation discloses that disciplinary action is not warranted for the protection of the public health, safety and welfare, the investigative file shall be closed, provided that the matter may be reinvestigated at any time if circumstances so warrant.

**Author:** Alabama Board of Nursing

**Statutory Authority:** Code of Alabama, 1975, §§ 34-21-2(~~h~~)(j)(1), 34-21-25.

**History:** Effective September 29, 1982. **Repealed and Replaced:** Filed January 29, 2002. Effective March 5, 2002. **Repealed and Replaced:** Filed May 21, 2010. Effective June 25, 2010.

#### **610-X-8-.05 Action Following Investigation.**

The Board or its authorized designee shall have the power to act on the report of the investigation as follows:

(1) Dismiss a complaint with a letter of closure or a letter of admonishment.

(2) Commence disciplinary proceedings through pursuit of informal disposition in accordance with Alabama Board of Nursing Administrative Code Section 610-X- 8-.08 or the issuance of an administrative complaint pursuant to Alabama Board of Nursing Administrative Code, Section 610-X-8-.07.

(3) Accept voluntary surrender of a license.

**Author:** Alabama Board of Nursing

**Statutory Authority:** Code of Alabama, 1975, §§ 34-21-2(~~h~~)(j)(1), 34-21-25.

**History:** Effective September 29, 1982. **Repealed and Replaced:** Filed January 29, 2002. Effective March 5, 2002. **Repealed and Replaced:** Filed May 21, 2010. Effective June 25, 2010. Proposed amended rule filed April 21, 2014.

#### **610-X-8-.06 Administrative Procedure Act.**

The Alabama Board of Nursing hereby adopts by reference as its rules §§ Sections 12 through 21 of Chapter 22, Title 41, **Code of Alabama, 1975**, as amended, governing contested cases, appeals, and related proceedings unless inconsistent with § Section 34-21-25 or Chapter 610-X-8.

**Author:** Alabama Board of Nursing

**Statutory Authority:** Code of Alabama, 1975, § 41-22-9.

**History:** Effective September 29, 1982. **Repealed and Replaced:** Filed January 29, 2002. Effective March 5, 2002. **Amended:** Filed July 22, 2005. Effective August 26, 2005. **Repealed and Replaced:** Filed May 21, 2010. Effective June 25, 2010. Proposed amended rule filed April 21, 2014.

### **610-X-8-.07 Formal Disposition of Contested Cases.**

(1) At least twenty days prior to the administrative hearing, an administrative complaint shall be served on the applicant, registered nurse, licensed practical nurse, advanced practice nurse, continuing education provider, or nursing education program as follows:

(a) Personal service made by any sheriff of the State of Alabama.

(b) If the applicant, registered nurse, licensed practical nurse, continuing education provider, or nursing education program is out of state, evades service, or cannot be served personally, service shall be made by registered or certified mail to the last known post office mailing address shown on the records of the Board.

(c) If the applicant, registered nurse, licensed practical nurse, advanced practice nurse, continuing education provider, or nursing education program is represented by an attorney who has filed a notice of appearance with the Board, service shall be made on the attorney personally or by registered or certified mail.

(2) The Board's administrative complaint may be amended without leave of the hearing officer prior to the hearing so long as the amendment is germane to the charge or charges and does not materially alter the nature of any offense charged.

(3) A motion for withdrawal of the administrative complaint may be filed with the Board. The circumstances surrounding the attempt to withdraw the administrative complaint shall be explained by the person who is attempting to withdraw the administrative complaint. A motion for withdrawal of the administrative complaint shall be ruled upon by the hearing officer. No administrative complaint that is well-founded shall be dismissed solely upon the motion of the original complainant.

(4) Pleadings relating to disciplinary proceedings pending before the Board shall be filed with the Board. Pleadings shall be deemed filed upon actual receipt.

(5) Requests for subpoenas shall be filed with the Board at least ten days prior to the administrative hearing along with the appropriate subpoena processing fee. Any expense for service by a sheriff, process server or other entity shall be the responsibility of the party requesting the subpoena. Any expenses incurred relative to subpoenas requested by a Respondent, either for witnesses or related to production of documents, are the responsibility of the party who requested the issuance of said subpoena.

(6) The administrative hearing shall be conducted by a hearing officer provided by the Board. All testimony shall be under oath and shall be transcribed by a court reporter scheduled by the Board. Telephonic or other real-time electronic testimony is admissible at the discretion of the hearing officer. Evidence may be taken by deposition at the discretion of the hearing officer.

(7) A continuance may be granted by the Board's designee or, if the Board's designee objects to said continuance, upon the filing of a written motion and affidavit detailing the reasons for the continuance. ~~No motion for continuance shall be granted unless filed at least five days prior to the administrative hearing. This provision may be waived upon showing of an emergency.~~

(8) The Board may, at its discretion, digitally record or video administrative hearings. The Hearing Officer shall rule upon objections to digital or video recording of an administrative hearing.

**Author:** Alabama Board of Nursing

**Statutory Authority:** Code of Alabama, 1975, §§ 34-21-2~~(h)~~(j)(1) (7)(8)(16), 34-21-25, 41-22-12, 41-22-14.

**History:** Effective September 29, 1982. Amended March 24, 1984. **Repealed and Replaced:** Filed January 29, 2002. Effective March 5, 2002. **Repealed and Replaced:** Filed May 21, 2010. Effective June 25, 2010. Proposed amended rule filed April 21, 2014.

#### **610-X-8-.08 Informal Disposition of Contested Cases.**

(1) Complaints or controversies may be considered and resolved by the Board or Board designee through alternative dispute resolution, informal conferences, meetings, or other informal means. Such shall be held without prejudice to the right of the Board thereafter to institute formal proceedings based upon the same or related material if circumstances so warrant.

(2) Informal dispositions may be made of any contested case by stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties in writing and as approved by the Board.

**Author:** Alabama Board of Nursing

**Statutory Authority:** Code of Alabama, 1975, §§ 34-21-2~~(h)~~(j)(1), 41-22-12(e).

**History:** Effective September 29, 1982. **Repealed and Replaced:** Filed January 29, 2002. Effective March 5, 2002. **Repealed and Replaced:** Filed May 21, 2010. Effective June 25, 2010.

#### **610-X-8-.09 Decisions of the Board.**

(1) Based upon the evidence presented at the administrative hearing or pursuant to informal disposition, the Board may take one or more of the following actions:

(a) Dismiss the administrative complaint in its entirety or any alleged violation in the complaint.

(b) Find the respondent not guilty of any or all of the violations alleged in the administrative complaint.

(c) Find the respondent guilty of any or all of the violations alleged in the administrative complaint. If the Board finds the respondent guilty of one or more of the violations

alleged in the administrative complaint, the Board may take one or more of the following disciplinary actions against the respondent:

- (i) Reprimand the respondent's license.
- (ii) Probate the respondent's license.
- (iii) Require the respondent to participate in an educational program.
- (iv) Suspend the respondent's license.
- (v) Revoke the Respondent's license.
- (vi) Lapse the Respondent's license by Order of the Board.
- (vii) Deny approval of the applicant to take the licensing examination or deny approval of the applicant for licensure by endorsement.
- (viii) Deny renewal or reinstatement of a license.
- (ix) Impose other sanctions or restrictions.
- (x) Levy a fine not to exceed \$1,000.00 per violation.
- (xi) Withdraw approval of a nursing education program.
- (xii) Deny approval of a nursing education program.
- (xiii) Continue approval of a nursing education program for a specified period.
- (xiv) Direct a nursing program administrator to notify students in writing of the Board's decision.

(2) The decisions of the Board shall be in writing in the form of an Order, a copy of which shall be mailed or delivered to the respondent or the respondent's attorney.

(3) The decisions of the Board shall be subject to public dissemination, including but not limited to the required reporting of disciplinary actions to all federal databanks.

(4) Judicial review of decisions of the Board may be sought in the Circuit Court of Montgomery County, Montgomery, Alabama. Appeals are to be perfected in accordance with the Alabama Administrative Procedures Act.

**Author:** Alabama Board of Nursing

**Statutory Authority:** Code of Alabama, 1975, §§ 34-21-25, 34-21-2(j)(1)(4)(5).

**History:** Effective September 29, 1982. **Repealed and Replaced:** Filed January 29, 2002. Effective March 5, 2002. **Repealed and Replaced:** Filed May 21, 2010. Effective June 25, 2010. **Amended:** Filed August 19, 2011. Effective September 23, 2011. Proposed amended rule filed April 21, 2014.

### **610-X-8-.10 Application Following Denial of Licensure.**

(1) Application for a license following denial of licensure shall:

(a) Include evidence of rehabilitation, or elimination or resolution of any issues that were identified in the Board's most recent order as reasons for denial of licensure.

(b) Be made according to Alabama Board of Nursing Administrative Code, Chapter 610-X-4, Licensure.

(2) Board action on applications following denial of licensure may be resolved either informally or through the administrative hearing process.

(3) In considering a subsequent application for licensure, the Board may evaluate factors that include but are not limited to:

(a) The severity of the act(s) or omission(s) which resulted in the denial of license.

(b) The conduct of the applicant subsequent to the denial of license.

- (c) The lapse of time since denial of license.
- (d) Compliance with any conditions stipulated by the Board as a prerequisite for a subsequent application.
- (e) Rehabilitation attained by the applicant as evidenced by statements provided directly to the Board from qualified individuals who have professional knowledge of the applicant.
- (f) Whether the applicant is in violation of any applicable statute or rule.

**Author:** Alabama Board of Nursing

**Statutory Authority:** Code of Alabama, 1975, §§ 34-21-2(~~h~~)(j)(1), 34-21-25.

**History:** Effective September 29, 1982. **Repealed and Replaced:** Filed January 29, 2002. Effective March 5, 2002. **Repealed and Replaced:** Filed May 21, 2010. Effective June 25, 2010. Proposed amended rule filed April 21, 2014.

### **610-X-8-.11 Reinstatement of a Revoked License.**

- (1) Application for reinstatement of a revoked license may be made twelve months after the effective date of revocation unless otherwise specified in Order or Agreement.
- (2) Applications for reinstatement of a revoked license shall include:
  - (a) The non-refundable application fee.
  - (b) Detailed letter of explanation regarding the circumstances that resulted in the revocation of the license and actions the applicant has taken to address the issue.
  - (c) Documented evidence of continuing education requirements for reinstatement of a lapsed license.
  - (d) Verification of the status of all health-care related licenses, certifications, and registrations from each jurisdiction/entity where a license, certification, or registration has ever been issued and certified copies of any disciplinary order(s) issued by any jurisdiction/entity where a license, certification, or registration has ever been issued.
  - (e) Five (5) affidavits from persons who are not related to the applicant and who have direct knowledge of the circumstances surrounding the revocation of the license and the actions the applicant has taken to address the issue.
  - (f) If the applicant's license was revoked while the applicant's license was on probation or was suspended, the applicant shall provide documented evidence regarding efforts to comply to support compliance with any previously stipulated terms of a Board Order or agreement.
  - (g) If the circumstances that resulted in the revocation of the license involved allegations of substance abuse or chemical dependency substance dependence, or drug diversion, or if the license was revoked while encumbered by an order requiring a program of random drug screening, the applicant shall provide:
    - (i) Documented evidence of a current comprehensive chemical dependency substance use disorder evaluation and fitness to return to the practice of nursing from conducted by a Board recognized treatment provider whose program includes a health care professionals tract and completed no more than twelve (12) months prior to the date of the application.
    - (ii) Evidence of compliance with all treatment provider recommendations.

(iii) Complete results of drug screens obtained from participation in a Board recognized program of random drug testing for a minimum of twelve (12) months following the completion of the comprehensive chemical dependency evaluation and any recommended treatment immediately prior to the date of the application.

(h) If the circumstances that resulted in the revocation of the license involved allegations of physical or mental impairment, the applicant shall provide:

(i) Documented evidence of current neuropsychological and physiological evaluations.

(ii) Compliance with all treatment provider recommendations.

(iii) A statement from the evaluators that the individual is fit to return to the practice of nursing.

(i) Executed releases authorizing the sharing of information between and communication with all necessary healthcare providers and Board staff.

(i) Submission of results of all required evaluations conducted by a Board acceptable licensed healthcare provider in consultation with Board staff.

~~(j)~~(k) If the applicant has any arrest(s) that resulted in pending misdemeanor or felony charges, the applicant shall provide:

(i) A detailed letter of explanation regarding the circumstances surrounding the charges.

(ii) The nature of the charges.

(iii) The case number.

(iv) The jurisdiction in which the charges are pending.

~~(j)~~ (l) If the applicant has any misdemeanor or felony conviction(s) or has (regardless of court disposition) entered a plea of guilt, nolo contendere, no contest, not guilty by reason of insanity, or other similar plea, the applicant shall provide:

(i) Certified copies of court records including the Case Action Summary showing the final disposition of the charges.

(ii) Any written Plea Agreement or Deferred Prosecution Agreement.

(iii) Documentation of compliance with conditions imposed by the Court.

~~(k)~~ (m) If the applicant has been administratively discharged from any branch of the armed services with any characterization besides "Honorable" or has been court-martialed, the applicant shall provide a detailed letter of explanation and official documentation of discharge (typically, a DD214 Members 4 copy).

~~(l)~~ (n) For every period of employment since revocation of the applicant's Alabama nursing license, the applicant shall provide:

(i) The name, address, and telephone number of any employer.

(ii) The name of any supervisor.

(iii) The dates of employment.

(iv) Job title.

(v) Description of job duties.

(vi) Reason for leaving said employment.

(3) Applications for reinstatement of a revoked license are incomplete until all of the information required to be provided pursuant to this rule has been submitted. The Board may not consider incomplete applications.

(4) Applications for reinstatement of a revoked license may be resolved either informally or through the administrative hearing process.

(5) In considering reinstatement of a revoked license, the Board may evaluate factors that include but are not limited to:

- (a) Severity of the act(s) that resulted in revocation of the license.
- (b) Conduct of the applicant subsequent to the revocation of license.
- (c) Lapse of time since revocation.
- (d) Compliance with all reinstatement requirements stipulated by the Board.
- (e) Rehabilitation attained by the applicant as evidenced by statements provided directly to the Board from qualified individuals who have professional knowledge of the applicant.
- (f) Whether the applicant is in violation of any applicable statute or rule.

**Author: Alabama Board of Nursing**

**Statutory Authority: Code of Alabama, 1975, § 34-21-25(j).**

**History:** Filed May 21, 2010. Effective June 25, 2010. Proposed amended rule filed April 21, 2014.

### **Rule 610-X-8-.12 Reinstatement of a Board Lapsed License**

- (1) Application for reinstatement of a board-lapsed license may be made at any time after the effective date of the Order that resulted in the Board-Lapsed license, unless otherwise specified in the Order.
- (2) Applications for reinstatement of a board-lapsed license shall include:
  - (a) The non-refundable reinstatement of lapsed license fee.
  - (b) A completed application for reinstatement of board-lapsed license.
  - (c) Documented evidence of continuing education requirements for reinstatement of a lapsed license.
  - (d) Executed releases authorizing the sharing of information between and communication with all necessary healthcare providers and Board staff.
  - (e) Submission of results of all required evaluations conducted by a Board acceptable licensed healthcare provider in consultation with Board staff.
  - (f) Submission of all documentation in support of any affirmative responses to regulatory questions on the application.
  - (g) Submission of official verification of licensure from each and every jurisdiction where the applicant holds or has ever held a nursing or health-related license.
- (3) Completed applications for reinstatement of a board-lapsed license shall be adjudicated through either informal disposition or formal disposition of a contested case. A Board-Lapsed license may only be reinstated by Order of the Board.
- (4) If the Board determines that the conditions identified in the Board-Lapsed Order have been satisfied, the Board may, in its discretion, reinstate the license upon such terms and conditions as it deems appropriate.
  - (a) If the Board-Lapsed Order stayed the licensee's Voluntary Disciplinary Alternative Program Agreement, the Board may, in its discretion, permit the licensee to complete the terms of the Voluntary Disciplinary Alternative Program Agreement, despite the prior imposition of the Board-Lapsed Order.
  - (b) If the Board-Lapsed Order stayed the licensee's probation, the Board's order shall, at a minimum, require the licensee to be reinstated on probation, under such terms and conditions as it deems appropriate.



**Author:** Alabama Board of Nursing

**Statutory Authority:** Code of Alabama, 1975, §§ 34-21-2, 34-21-24 (a).

**History:** Filed August 19, 2011. Effective September 23, 2011. Proposed amended rule filed April 21, 2014.