



OFFICE OF ATTORNEY GENERAL  
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION  
2017-706A

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

September 29, 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 6.009.18. The licensee in this case is licensed as a registered nurse (RN). The licensee's RN license is suspended for defaulting from the Peer Assistance Program (PAP). The proposed action of the Board is for the licensee's RN license to remain suspended, re-refer the licensee to the PAP, and require the licensee to resubmit an application for reinstatement within 60 days of acceptance to the PAP. If the licensee is not accepted into the PAP, and/or the licensee terminates/defaults from the PAP, then the licensee's RN license will be revoked for 5 years. Additionally, if the licensee's license is revoked under these circumstances, then the Board will require the licensee to pay an administrative penalty in the amount of \$2,500 and also meet the Board's Guidelines for Individuals Requesting Reinstatement After Suspension, Surrender or Revocation for Misappropriation or Misuse of Drugs/Alcohol.

On November 25, 2015, while employed by a staffing agency and working at a hospital, the licensee consented to a for-cause drug screen at the request of hospital administration after receiving reports from Patient #1 that the licensee substituted Tylenol tablets in the place of Patient #1's physician ordered pain medication, Percocet, a Schedule II Controlled Dangerous Substance medication, 2 times during the licensee's shift. The licensee tested positive for Hydrocodone, Hydromorphone, Oxycodone, Oxymorphone and Soma as confirmed by GC/MS and reported by a medical review officer. The licensee admitted to Board staff that the licensee had substituted Tylenol tablets for the Percocet tablets and kept the Percocet for the licensee's personal use. Additionally, the licensee admitted to Board staff that the licensee had been ingesting Percocet, Lortab and Soma from members of the licensee's family that were not prescribed for the licensee. On January 21, 2016, the licensee voluntarily entered the Board's PAP after admitting to an abuse and/or addiction problem with drugs and/or alcohol (specifically, Percocet, Hydrocodone, Soma). On March 8, 2017, the licensee defaulted from the PAP for failure to comply with the terms and conditions of the licensee's Contract and Amended Contracts with the Peer Assistance Committee. The licensee has admitted to having a substance use disorder and has requested a re-referral to PAP.

The Oklahoma Nursing Practice Act, 59 O.S.2011 & Supp.2016, §§ 567.1–567.26, authorizes the Board to impose discipline when a nurse “[f]ails to adequately care for patients or to conform to

the minimum standards of acceptable nursing” in a way that “unnecessarily exposes a patient or other person to risk of harm,” “[i]s intemperate in the use of alcohol or drugs [in a manner which] endangers or could endanger patients,” “[i]s guilty of unprofessional conduct,” “[i]s guilty of any act that jeopardizes a patient’s life, health or safety,” has “[v]iolated a rule promulgated by the Board, an order of the Board, or a state or federal law relat[ed] to the practice of . . . nursing . . . or a state or federal narcotics or controlled dangerous substance law” or “[h]as defaulted from the [PAP] for any reason[.]” 59 O.S.Supp.2016, § 567.8(B)(3-4), (7-9), (11). The Board rules provide that adherence to minimal standards of acceptable nursing practice indicates using “[s]ufficient knowledge or reasonable skill.” OAC 485:10-11-1(b)(2). “Unprofessional conduct” includes, but is not limited to, “falsely manipulating drug supplies, narcotics or patient records,” “appropriating without authority medications, supplies or personal items of the patient or agency,” “conduct detrimental to the public interest,” “failure to maintain proper custody and control of controlled dangerous substances of the patient or agency” and “diversion or attempts to divert drugs or controlled substances[.]” OAC 485:10-11-1(b)(3)(C-D), (H), (T), (U). Conduct which “jeopardizes a patient’s life, health or safety” includes, but is not limited to, “[f]ailure to utilize appropriate judgment in administering safe nursing practice or patient care assignment based upon the level of nursing for which the individual is licensed or recognized[.]” OAC 485:10-11-1(b)(4)(D). Further, the Act also provides that “[a] nurse may apply to participate in the [PAP] program by choice or may be directed to apply to the [PAP] program 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). 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.” *Id.* § 567.8(A)(1)(b), (2-3); *see also* OAC 485:10-11-1(a). The Board may reasonably believe that the proposed disciplinary action and the licensee’s participation in the PAP 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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