



How to Develop Disciplinary Guidelines

This article was based on a presentation by Donna H. Mooney, RN, MBA, Manager-Regulatory Affairs, North Carolina Board of Nursing at the 2014 FSBPT annual meeting.

Consistency in sanctioning is a question often raised by board members, licensees and their attorneys and as an issue on appeal. It is always important to include consistency and fairness in any disciplinary process.

The North Carolina Board of Nursing, after an exhaustive study of previous decisions, developed guidelines to assist staff, the board's attorney and board members in assuring that fairness and consistency exists in all disciplinary decisions.

This article describes a framework for developing disciplinary guidelines for your disciplinary process in order to have consistency and fairness in the decision-making process. You will find resource documents at the end of the article to assist in developing your board's disciplinary guidelines.

The North Carolina Board of Nursing has 140,000 licensees so the board needed to find a system to handle sanctions more easily.

This meant it needed to:

- Develop guidelines to assist employers and the public in determining what was appropriate to report.
- Develop a systematic approach for reviewing all complaints to determine appropriate complaint resolution.
- Determine appropriate sanctions for complaints where violations of law were substantiated.

This process took 10 years in which the following timeline occurred:

- 2001 – Pilot projects with PREP (Practice Remediation and Enhancement Program). This

was used to deal with minor complaints in which there was no patient harm, however, if this type of practice were continued, it would be troubling. The board, licensee and employer would agree on non-disciplinary action and all three would sign a contract for remediation, unless another incident occurred and then a formal disciplinary process would begin.

- 2004 – PREP adopted statewide.
- 2005 – David Marx (father of Just Culture and CEO of Outcome Engenuity) gives a presentation to board and staff on Just Culture model of discipline. Developed Just Culture model that morphed into the Complaint Evaluation Tool (CET).
- 2007 – Pilot project with CET – CET was a document used by investigators and employers in determining what should be sent to the board and which was employee-employer related and should stay within the agency. There was scoring to determine what was to stay within the agency, what needed to be reported to a practice consultant who, with managers, would decide what remedies existed or what should be reported to the board.
- 2010 – CET adopted statewide.
- 2010 –Sanctioning Guidelines developed.

In creating a framework for disciplinary guidelines, [Just Culture](#) principles were used. Just Culture moves us away from blame and shame to a culture of learning and accountability for one's behavior by:

- Creating a learning culture
- Creating an open and fair culture for evaluating licensees
- Promoting the development of safe systems
- Managing behavioral choices.

The model pulled out “human error;” instead, it treated human error by consoling the person. With at-risk behavior, it provided coaching and counseling. Finally, punishment was meted out for reckless behavior.

Guiding Principles for use of Just Culture in disciplinary proceedings

- Public protection is paramount (reckless behavior is not included here – in sexual misconduct or drug use cases, other disciplinary action is taken).
- Sanctions should reflect the misconduct.
- Appropriately stringent sanctions are necessary.
- Consistency in sanctioning is necessary for maintaining integrity in the disciplinary process.

How were these guidelines developed? The board:

- Reviewed disciplinary actions from other boards.
- Reviewed information available in the legal community.
- Conducted an internal review of prior disciplinary actions by our board over a seven-year period. Now the board keeps better reports listing basis for decisions, mitigating circumstances, etc.

The guideline implementation phases included:

Phase 1 – A Pilot was implemented for drug-related violations. Two types of violations are: Using drugs themselves (impaired individual) OR practice related, such as inappropriate recordkeeping of drugs.

- Those with a chemical dependency problem – diagnosed with a substance use disorder – go into the Alternative Program (non-disciplinary, three-year monitoring program).
- Those with a positive drug screen or DWI, go into the Intervention program (one-year monitoring).
- Those with discrepancies in controlled substance documentation but not determined that they are using drugs, receive a one-year probation with drug screening. If there was no negative report at end of the year, it is removed.
- Formal disciplinary process is used when someone is diverting drugs to someone else or selling them – this usually calls for a minimum one-year license suspension.

Phase 2 – Implementation of sanctioning guideline tools by senior staff.

Senior staff could offer a case resolution to the licensee at the time of the investigation. Staff would use the guidelines for that type of problem in which guidelines are clear on what happens in each instance.

Phase 3 – Implementation of sanctioning guidelines by board members during settlement conferences and hearings.

Results and Benefits

In five years, the following occurred:

- The percentage of cases resolved through consent orders or voluntary surrenders went from 25% to 85%.
- The average time to resolve complaints went from 198 days to fewer than 100 days.
- The number of cases going to settlement or hearing decreased from 9% of total cases to less than 6%.
- The board staff and board members developed a more trusting relationship due to this process.

Overall, what has happened is:

- There is a focus on managing behavioral choices.
- An increased clarity in decision-making.
- Improvement in efficiency in disciplinary process.
- Reduction in cost for disciplinary matters.

Resource Documents:

Documentation Error Violations

- [Guidelines for suggested remedies to resolve substantiated complaints](#)
- [Risk categories and sanctions to consider](#)

Exceeding Scope of Practice

- [Guidelines for suggested remedies to resolve substantiated complaints](#)
- [Risk categories and sanctions to consider](#)

Failure to Maintain Standards of Care

- [Guidelines for suggested remedies to resolve substantiated complaints](#)
- [Risk categories and sanctions to consider](#)

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Manager-Regulatory Affairs, North Carolina Board of Nursing For more than 25 years, Donna has worked in regulation dealing primarily with discipline issues. While a strong consumer advocate for assuring sanctioning for licensees when warranted, her strong desire to also assure fairness and consistency for all licensees was also an issue. Donna has worked with the system both before there were guidelines to assist the Board and staff in decision-making and since the guidelines were developed. Donna is a licensed nurse and holds an MBA. She is a two-time past president of CLEAR (Council on Licensure, Enforcement and Regulations).