



Minnesota Board of Nursing: Complaint Resolution Process

Board decisions to discipline nurses or dismiss complaints have been generally reasonable, but it has taken too long to suspend nurses when public safety is at risk.

Key Facts and Findings:

- The Minnesota Board of Nursing received nearly 1,800 complaints in fiscal year 2014—about 15 complaints for every 1,000 licensed nurses in the state.
- In fiscal year 2014, 72 percent of board actions on complaints were dismissals, and 24 and 4 percent, respectively, involved disciplinary or nondisciplinary action.
- Between fiscal years 2009 through 2014, the board imposed suspensions more frequently than any other form of discipline.
- While complaint resolution outcomes have been generally reasonable, it has taken the board too long to resolve some complaints, putting public safety at risk.
- The board’s ability to resolve many complaints in a timely, consistent manner has been adversely affected by its limited investigatory authority and lack of internal guidelines or administrative rules.
- The board’s complaint resolution process has not always been fair to nurses, and some provisions of state law are too strict.
- The board must sometimes process complaints against nurses who are participating in the Health Professionals Services Program (HPSP), an alternative-to-discipline monitoring program, without the board’s knowledge.

Key Recommendations:

- The Legislature should:
 - Allow the board to continue using its authority under the *Nurse Practice Act* to suspend nurses.
 - Give board staff greater authority to investigate and dismiss complaints.
 - Allow the board to expunge certain information about actions it has taken from nurses’ public records, when appropriate.
 - Require the board to send a list of nurses who have complaints filed against them to HPSP, where staff would identify nurses enrolled in their program.
- The Minnesota Board of Nursing should:
 - Make greater and quicker use of its authority to temporarily suspend nurses.
 - Develop guidelines or administrative rules to help board members determine appropriate actions for certain types of complaints and delegate to staff greater responsibility to resolve some complaints.
- The Minnesota Board of Nursing and HPSP should develop joint policies and procedures to identify when nurses participating in HPSP must be reported to the board.

Report Summary

One of the Minnesota Board of Nursing's important responsibilities is to receive and resolve complaints against the nurses it regulates. The board's primary goal is to protect the public from incompetent practice or inappropriate behavior by nurses. At the same time, the board must provide nurses with adequate due process. Achieving that balance is often complex and challenging.

To help fulfill the board's mission, the 1995 Legislature created the Health Professionals Services Program (HPSP). This program monitors the practice of nurses (and other health professionals) with substance abuse problems or other physical, mental, or health conditions. The Minnesota Board of Nursing may refer nurses to HPSP. Nurses may also refer themselves or be referred by third parties. In these latter situations, the nursing board may not know that the nurses have conditions that, if left unmonitored or untreated, may affect their practice.

In fiscal year 2014, the board received 1,784 complaints. Of the board actions taken on complaints that year, 72 percent were dismissals, 24 percent involved disciplinary actions, and 4 percent involved nondisciplinary actions.

Overall, the board's final complaint resolution decisions have been generally reasonable.

Board decisions to dismiss or take other actions to resolve complaints have been reasonable—that is, its decisions have generally been appropriate given the nurses' violations. Complaint outcomes have adequately protected the public. The board has generally imposed its most serious actions—license suspension or revocation—in situations where the public has been at risk. If anything, the

board has tended to err on the side of public safety in disciplining nurses. For example, disciplinary actions made up 24 percent of all actions taken by the board in fiscal year 2014. The board most frequently disciplined nurses by suspending their licenses. Suspensions made up at least 43 percent of all disciplinary actions in 2014, up from 31 percent in 2009.

The board's high dismissal rate—72 percent in 2014—is misleading. Dismissals often involved complaints against nurses not working in Minnesota, or complaints that did not rise to the level of board action. The board also dismissed complaints that were unfounded, duplicative, had already been addressed by nurses or employers, or did not allege violations of state law. Finally, the board dismissed complaints that were too vague or general to investigate. In the complaints we reviewed, dismissal seemed the appropriate and reasonable decision.

The board has acted too slowly to suspend nurses, which has placed the public at risk.

Although the board has generally resolved complaints within timeframes set in statute and board policy, it has not always acted quickly enough when public safety is at risk.

The board has rarely used its authority to issue temporary suspensions to quickly remove nurses from practice. It issued only 11 temporary suspensions in fiscal years 2009 through 2014, with 7 of the 11 issued in 2014. Although temporary suspensions are done in situations where the public is at a serious risk of harm, the board issued the suspensions within four months of receiving a complaint in only about half of these cases. We identified several instances where the board could have—and should have—acted more quickly than it did.

The Legislature should expand the authority of board staff to investigate and dismiss complaints.

Statutes require that the board forward complaints requiring investigation to the Office of the Attorney General. While the law does not define what constitutes an investigation, the board has generally interpreted it to include fieldwork and interviews with nurses. Consequently, board staff do not routinely conduct interviews with nurses or talk with other involved parties outside of discipline conferences.

The board's limited investigatory powers have led to delays and gaps in its ability to build sound cases in a timely manner. Some staff told us they could potentially conclude an investigation with a ten-minute phone interview, but they believe state law prevents them from doing this. Instead, in the majority of complaints that require investigation, board staff convene discipline review panels to interview nurses, which adds time to the resolution process.

The board's investigatory authority should be expanded, which is in keeping with national nursing guidelines for effective regulatory agencies. Several Minnesota state agencies, including the departments of Human Services and Health, routinely interview individuals and visit sites as part of their complaint investigation processes.

To reduce some of the workload and time required of board members, board staff should be able to dismiss more complaints themselves—without requiring the approval of two board members. One board member told us that reviewing dismissed complaints takes time away from other work board members could be doing, especially since members rarely disagree with staff recommendations to dismiss. Further, allowing staff to dismiss complaints should reduce the board's reliance on discipline conferences to resolve some complaints.

The board should adopt guidelines or rules to ensure more timely and consistent decisions.

The board should develop guidelines or administrative rules that describe violations of state law and the range of board actions appropriate for each type of violation. Guidelines or rules are especially needed given that we found inconsistencies in how the board handled low-level practice complaints. They are also needed to help the board manage the increased number of complaints it will receive once it fully implements the criminal background checks required by the 2013 Legislature.

Further, the board should expand staff's ability to propose settlements in cases where violations do not pose a serious risk to the public. In keeping with current law, all disciplinary actions would not become final until full board approval. The board would need to develop guidelines that delineate the type of complaints staff could handle themselves. This could, in turn, reduce the number of discipline conferences needed.

The complaint resolution process is not always fair to nurses.

Participating in a discipline conference is the only time most nurses have to talk directly with staff or the board member who ultimately decides what action to recommend to the board. But most nurses come to the conferences without attorneys to help them understand the process. Much of the process—as well as the documents staff send out in advance—are very legalistic. Related documents are not written in plain English. This can be very intimidating to nurses. Furthermore, the board's website provides very little helpful information for nurses involved in the complaint process.

Also, state law may be unduly harsh in making all disciplinary and other actions public information indefinitely. For

example, some advocates for nurses told us that nurses can have difficulty finding employment years after having completed remedial courses to improve their practice. Even in some cases of nurse discipline, it may not serve a public safety purpose to keep all actions public forever.

Unlike some states, Minnesota does not have a system that expunges parts of nurses' records so that the public cannot see some actions taken against them. The 2014 Legislature amended state law to allow for expunging some criminal convictions from the public record. The same consideration should be bestowed upon nurses—especially for nurses not convicted of any crimes.

Staff must process complaints against nurses enrolled in HPSP without the board's knowledge.

In theory, the board has no knowledge of nurses who self refer to HPSP or are referred there by third parties, such as employers. This makes it difficult for the board to investigate complaints against nurses. The board only learns about their participation if HPSP (1) notifies the board when nurses do not comply with program requirements or (2) discharges nurses for any reason other than successful completion. Over half of the self-referred or third-party referred nurses in HPSP whose cases were closed in fiscal years 2010 through 2014 eventually came to the board's

attention, most often because they did not comply with HPSP requirements.

Overall, 83 percent of the nurses participating in and successfully completing HPSP without the board's knowledge had no complaints filed against them while in HPSP. At the same time, however, board staff processed complaints against 17 percent of the nurses who successfully completed HPSP without the board's knowledge.

Statutes should allow the board to learn if nurses with complaints filed against them have enrolled in HPSP.

The Legislature should amend statutes to allow the board to routinely submit a list of nurses with complaints filed against them to HPSP, where staff would identify whether any of those nurses were enrolled in their program.

It is not necessary that the board know the identity of all nurses successfully participating in HPSP if the board or HPSP has not received any complaints against them. Staff at HPSP have done a good job monitoring nurses; nurses who are compliant with the program likely do not pose a public safety risk. Thus, the confidentiality provisions that allow nurses to refer themselves or be referred by third parties without being reported to the board should continue, as long as the nurses thus referred do not have complaints filed against them.

Summary of Agencies' Responses

In a letter dated March 3, 2015, Shirley Brekken, Executive Director, Minnesota Board of Nursing, said that, "Generally, the Board believes the report is accurate and agrees with the facts and findings." The board commented favorably on the report's key recommendations, but took exception to OLA recommendations allowing suspended nurses to participate in the Health Professionals Services Program. In a letter dated February 26, 2015, Monica Feider, Program Manager, Health Professionals Services Program, disagreed with OLA recommendations that would result in nurse-specific policies, procedures, and mechanisms.

The full evaluation report, *Minnesota Board of Nursing: Complaint Resolution Process*, is available at 651-296-4708 or: www.auditor.leg.state.mn.us/ped/2015/nursing.htm