

CHAPTER THREE REGISTERED NURSE PRACTITIONER

SECTION I SCOPE OF PRACTICE

A. REGISTERED NURSE PRACTITIONER

A registered nurse practitioner is a licensed professional nurse prepared in the manner stated herein who provides direct care to individuals, families, and other groups in a variety of settings, including homes, hospitals, offices, industry, schools, and other institutions and health care settings. The service provided by the nurse practitioner is directed toward the delivery of primary, secondary, and tertiary care which focuses on the achievement and maintenance of optimal functions in the population. The nurse practitioner engages in independent decision making about the nursing care needs of clients and collaborates with health professionals and others in making decisions about other health care needs. The practitioner plans and institutes health care programs as a member of the health care team. The nurse practitioner is directly accountable and responsible to the recipient for the quality of care rendered.

Rules which apply to registered nurses are hereby incorporated by reference.

B. ACTS PROPER TO BE PERFORMED BY A REGISTERED NURSE PRACTITIONER

1. The Arkansas State Board of Nursing authorizes the registered nurse practitioner, in collaboration with and under the direction of a licensed physician, to perform particular acts at the advanced and specialized levels as recognized by the nursing profession and which are in conformity with the *Nurse Practice Act*.
 - a. Secures, records, and evaluates the health, psychosocial, and developmental history of patients;
 - b. Performs physical examinations using techniques of observation, inspection, auscultation, palpation and percussion, and uses appropriate diagnostic tests;
 - c. Discriminates between normal and abnormal findings on the history and physical examination and refers the individuals who need further evaluation or supervision;
 - d. Documents the processes of nursing care delivery;
 - e. Contributes to the comprehensive care of the ill in collaboration with the health care team.
 - f. Coordinates health care plans to enhance the quality of health care and diminish both fragmentation and duplication of service;
 - g. Contributes to the health education of individuals and groups and applies methods designed to increase each person's motivation to assume responsibility for his own health care;
 - h. Facilitates entry into and through the health care system by appropriate route;
 - i. Counsels with families and/or individuals regarding family planning, pregnancy, child care, emotional stresses, long term illness, and general health problems;
 - j. Performs periodic health evaluations and plans for health maintenance of clients; and
 - k. Conducts community clinics for case finding and screening for health problems.
- ~~3.~~ 2. The Arkansas State Board of Nursing authorizes the registered nurse practitioner, in collaboration with and under the direction of a licensed physician, to perform particular acts recognized by the nursing profession and which are in conformity with the *Nurse Practice Act*.
 - a. Assumes responsibility for ongoing health maintenance and clinical management of stable chronically ill patients;
 - b. Provides initial care of emergencies and initiates arrangements for continuing definitive care;
 - c. Identifies, manages, and initiates treatment for common medical problems by "Protocols" as described in Section I.C.; and
 - d. Evaluates progress and manages prenatal and postpartum care.

C. PROTOCOLS

1. Any nurse practicing as a registered nurse practitioner shall practice in accordance with protocols developed in collaboration with and signed by a licensed physician.
2. Protocols shall address:
 - a. Established procedures for the management of common medical problems in the practice setting;
 - b. The degree to which collaboration, independent action, and supervision are required; and
 - c. Acts including, but not limited to, assessment, diagnosis, treatment, and evaluation.

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3. Protocols shall not include controlled substances.
4. Documentation.
 - a. Orders transmitted from protocols shall be documented on the client's medical record;
 - b. Orders transmitted from protocols to inpatient medical records shall contain:
 - (1) Name of medication, therapeutic device, or treatment;
 - (2) Strength;
 - (3) Dose;
 - (4) Length of time or amount prescribed;
 - (5) Directions for use;
 - (6) RNP Signature; and
 - (7) Physician's name, printed, followed by notation "protocol."
5. Any deviation from written protocols shall require:
 - a. A specific written or verbal order from the collaborating physician before the order is transmitted or implemented; and
 - b. Documentation in the medical record as specified in ~~a~~b.(1)-(6) above, and notation that order was by consultation, to be signed by the RNP.
6. Review of Protocols
 - a. The RNP shall document annual joint review with the licensed physician, and revise when necessary.
 - b. The RNP shall, upon request, provide the Board with current protocols.
7. Nothing in this regulation shall be construed to prohibit any registered nurse practitioner from transmitting a prescription order orally or telephonically, or from administering a legend drug pursuant to a lawful direction of a licensed physician, dentist, or advanced practice nurse who holds a certificate of prescriptive authority.

D. SERVICES AND RESPONSIBILITIES

The RNP shall, upon request of the Board, provide documentation outlining the extent of services, responsibilities, and required supervision of nurse practitioners, and the accompanying responsibilities of collaborating physicians.

E. DELEGATED ACTS

The registered nurse practitioner shall demonstrate competence in any act or procedure delegated by the collaborating physician.

SECTION II LICENSURE

A. Initial licensing of registered nurse practitioners terminated on November 30, 2000.

A. QUALIFICATIONS

~~Up to, including and terminating after November 30, 2000:~~

- ~~1. Active licensure as a registered nurse in Arkansas.~~
- ~~2. Documentation acceptable to the Board of:~~
 - ~~a. Satisfactory completion of a nurse practitioner educational program. Such program of study shall conform to the program guidelines outlined in Chapter Six of these rules and shall be approved by the Board.~~
 - ~~3. Documentation of completion of a preceptorship under a preceptor who meets the following qualifications:~~
 - ~~a. Current licensure as an RNP or ARNP; and~~
 - ~~b. Three (3) years experience as an RNP or ARNP; or~~
 - ~~c. A physician currently licensed.~~

B. APPLICATION FOR INITIAL LICENSURE

~~In addition to current licensure as a registered nurse, the information submitted to the Board shall include:~~

~~Up to, including and terminating after November 30, 2000:~~

- ~~1. A completed application form;~~
- ~~2. An official transcript or document from a program which meets the qualification as set forth in~~

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- ~~Chapter Six of these rules, and which contains the dates of entry and completion, and the credential conferred; and~~
3. ~~If not included in the official transcript, a document from the program verifying the preceptorship, including the beginning and ending dates, and the licensure status of the preceptor.~~

C.B. RENEWAL

1. The date for renewal of licensure to practice as a registered nurse practitioner shall coincide with the renewal of the applicant's registered nurse license.
2. An application for renewal of a registered nurse practitioner license shall submit to the Board:
 - a. A completed application form; and
 - b. Payment of the nonrefundable renewal fee.

D.C. LAPSED LICENSE

1. The license is lapsed if not renewed or placed in an inactive status by the expiration date.
2. Failure to receive the renewal notice shall not relieve the licensee of the responsibility for renewing the license by the expiration date.
3. Any licensee whose license has lapsed shall submit to the Board:
 - a. A completed Board renewal application form; and
 - b. The renewal fee and the reinstatement fee.
4. Fees are nonrefundable.
5. Any person practicing as a registered nurse practitioner during the time his or her license has lapsed shall be considered an illegal practitioner and shall be subjected to the penalties provided for violation of the *Nurse Practice Act*.

E.D INACTIVE STATUS

1. Any licensee in good standing who ~~desired~~ desires his or her registered nurse practitioner license to be placed on inactive status may submit a request in writing to the Board.
2. The current license shall be placed on inactive status ~~from the date of expiration.~~
3. While the license is inactive, the licensee shall not engage in registered nurse practitioner nursing nor be subject to the payment of renewal fees.
4. If the nurse desires to resume practice, he or she shall submit a written request for a renewal application, which shall be completed and submitted with a renewal fee and the reinstatement fee.
5. Fees are nonrefundable.
6. If disciplinary proceedings on an inactive licensee have been initiated, the license shall not be reinstated until the proceedings have been completed.

SECTION III **DUPLICATE LICENSE**

- A. The licensee shall immediately report a lost, stolen, or destroyed license to the Board.
- B. A duplicate license shall be issued when the licensee submits a notarized statement to the Board that the document is lost, stolen, or destroyed, and pays the required fee.
- C. The license will be marked "duplicate".

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SECTION IV NAME OR ADDRESS CHANGE

- A. A licensee whose name is legally changed shall be issued a replacement license following submission of the current license, along with an affidavit, copy of marriage license or court action, and the required fee.
- B. A licensee, whose address changes from the address appearing on the current license, shall immediately notify the Board in writing of the change.

~~Effective November 30, 2000~~

Effective December 1, 2008

CHAPTER FIVE DELEGATION

A. PURPOSE

Registered nurses, licensed practical nurses, and licensed psychiatric technician nurses, within the parameters of their education and experience, are responsible for all nursing care that a client receives under their direction. Assessment of the nursing needs of a client, the plan of nursing actions, implementation of the plan, and evaluation of the plan, under the direction of a registered professional nurse, are essential components of nursing practice. Unlicensed personnel may be used to complement the licensed nurse in the performance of nursing functions; but such personnel cannot be used as a substitute for the licensed nurse.

Delegation by registered nurses, licensed practical nurses, and licensed psychiatric technician nurses must fall within the definitions of Arkansas Code Annotated §17-87-102. Delegation must occur within the framework of the job description of the delegatee and organizational policies and procedures, and must be in compliance with the Arkansas *Nurse Practice Act*. The following sections govern the licensed nurse in delegating and supervising nursing tasks to unlicensed personnel in all settings.

B. CRITERIA FOR DELEGATION

1. Delegation of nursing tasks to unlicensed persons shall comply with the following requirements:
 - a. A licensed nurse delegating the task is responsible for the nursing care given to the client and for the final decision regarding which nursing tasks can be safely delegated.
 - b. A licensed nurse must make an assessment of the client's nursing care needs prior to delegating the nursing task. (Ref. Section C. for exceptions.)
 - c. The nursing task must be one that a reasonable and prudent licensed nurse would assess to be appropriately delegated; would not require the unlicensed person to exercise nursing assessment, judgment, evaluation or teaching skill; and that can be properly and safely performed by the unlicensed person involved without jeopardizing the client's welfare.
 - d. A licensed nurse shall have written procedures available for the proper performance of each task and shall have documentation of the competency of the unlicensed person to whom the task is to be delegated.
 - e. The delegating licensed nurse shall be readily available either in person or by telecommunication.
 - f. The licensed nurse shall be responsible for documentation of delegated tasks.
 - g. Unlicensed nursing students may work only as unlicensed nursing personnel. They may not represent themselves, or practice, as nursing students except as part of a scheduled clinical learning activity in the curriculum of a Board approved nursing program.
 - h. The licensed nurse shall adequately supervise the performance of delegated nursing tasks in accordance with the requirements of supervision which follow.
2. Supervision: The degree of supervision required shall be determined by the licensed nurse after an evaluation of appropriate factors involved, including, but not limited to, the following:
 - a. The stability of the condition of the client;
 - b. The training and capability of the unlicensed person to whom the nursing task is delegated;
 - c. The nature of the nursing task being delegated; and
 - d. The proximity and availability of a licensed nurse to the unlicensed person when performing the nursing task.

C. SPECIFIC NURSING TASKS WHICH MAY BE DELEGATED WITHOUT PRIOR NURSING ASSESSMENT

By way of example, and not in limitation, the following nursing tasks are ones that are within the scope of sound nursing practice to be delegated, provided the delegation is in compliance with ACA §17-87-102 and the level of supervision required is determined by the nurse.

1. Noninvasive and non-sterile treatments unless otherwise prohibited by Section D. of this Chapter (relating to nursing tasks that may not be routinely delegated);
2. The collecting, reporting, and documentation of data including, but not limited to:
 - a. Vital signs, height, weight, intake and output, urine test, and hematest results;

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- b. Changes from baseline data established by the nurse;
- c. Environmental and safety situations;
- d. Client or family comments relating to the client's care; and
- e. Behaviors related to the plan of care;
3. Ambulation, positioning, and turning;
4. Transportation of the client within a facility;
5. Personal hygiene;
6. Feeding, cutting up of food, or placing of meal trays;
7. Socialization activities;
8. Activities of daily living; and
9. Reinforcement of health teaching planned and/or provided by the registered nurse.

D. NURSING TASKS THAT MAY NOT BE ROUTINELY DELEGATED

1. Nursing tasks not included in Section C. are not usually within the scope of sound nursing judgment to delegate and may be delegated only in accordance with subsection 2. of this section.
2. The nursing tasks of this section may be delegated to an unlicensed person only:
 - a. Under circumstances where a reasonable and prudent licensed nurse would find that the delegation does not jeopardize the client's safety and/or welfare;
 - b. If, in the judgment of the licensed nurse, the unlicensed person has the appropriate knowledge and skills to perform the nursing task(s) in a safe and effective manner;
 - c. If the licensed nurse delegating the task is directly responsible for the nursing care given to the client;
 - d. If the agency, facility, or institution, employing unlicensed personnel, follows a current protocol for the instruction and training of unlicensed personnel performing nursing tasks under this subsection; and that said protocol is developed by and taught under the supervision of registered nurses currently employed in the facility, and includes:
 - (1) The manner in which the instruction addresses the complexity of the delegated task;
 - (2) The manner in which the unlicensed person demonstrates competency of the delegated task;
 - (3) The mechanism for reevaluation of the competency; and
 - (4) An established mechanism for identifying those individuals to whom nursing tasks under this subsection may be delegated; and
 - e. If the protocol recognizes that the final decision as to what nursing tasks can be safely delegated in any specific situation is within the specific scope of the nurse's professional judgment.

E. NURSING TASKS THAT SHALL NOT BE DELEGATED

By way of example, and not in limitation, the following are nursing tasks that are not within the scope of sound nursing judgment to delegate:

1. Physical, psychological, and social assessment which requires nursing judgment, intervention, referral, or follow-up;
2. Formulation of the plan of nursing care and evaluation of the client's response to the care rendered;
3. Specific tasks involved in the implementation of the plan of care which require nursing judgment or intervention;
4. The responsibility and accountability for client health teaching and health counseling which promotes client education and involves the client's significant others in accomplishing health goals; and
5. Administration of any medications or intravenous therapy, including blood or blood products except as allowed by ASBN Rules Chapter 8 for Medication Assistant-Certified and by ASBN School Nurse Roles and Responsibilities Practice Guidelines.
6. Receiving or transmitting verbal or telephone orders;
7. Registered nurse practitioners and advanced practice nurses shall not delegate to unlicensed ancillary staff the calling in of prescriptions to the pharmacy.

F. TRANSFERENCE OF DELEGATED NURSING TASKS

It is the responsibility of the licensed nurse to assess each client prior to delegation of a nursing task and determine that the unlicensed person has the competence to perform the nursing task in that client=s situation.

1. The licensed nurse shall not transfer delegated tasks to other clients under the care of the

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unlicensed person.

2. In delegating personal care, a licensed nurse is not required to assess each client; but must periodically assess the competence of the caregiver in those activities.

G. EXCLUSIONS

These sections shall not be construed to apply to:

1. The gratuitous nursing care of the sick by family or friends;
2. The furnishing of nursing care where treatment is by prayer or spiritual means alone;
3. Acts done by persons licensed by any board or agency of the State of Arkansas if such acts are authorized by such licensing statutes;
4. Nursing tasks performed by nursing students enrolled in Board approved nursing programs while practicing under the direct supervision of qualified faculty or preceptors;
5. The instruction and/or supervision of licensed nurses by registered professional nurses in the proper performance of tasks as a part of a state approved training/education course designed to prepare persons to obtain certification:
6. Nursing tasks performed by paramedic/emergency medical technician students enrolled in State approved programs while practicing under the direct supervision of qualified faculty or preceptors;
67. The performance in the school setting of nursing procedures necessary for students to achieve activities of daily living as cited in the Education of the Handicapped Act, 20 United States Code 1400-1485, and which are routinely performed by the student or the student=s family in the home setting.
- 7- 8The acts of unlicensed persons responding to an emergency. This exclusion shall not be construed as permitting licensed nurses to delegate routinely to unlicensed persons.
- 8- 9Health maintenance activities performed by a designated care aide in the home as defined in the Consumer Directed Care Act of 2005, ACA §17-87-103 (11).

H. CONSUMER DIRECTED CARE

1. Health maintenance activities may be provided by a designated care aide for a competent adult at the direction of the adult or for a minor child or incompetent adult at the direction of a caretaker.
2. Caretaker means a person who is directly and personally involved in providing care for a minor child or incompetent adult, and the parent, foster parent, family member, friend, or legal guardian of the minor child or incompetent adult receiving care.
3. Designated care aide means the person hired by the competent adult or caretaker to provide care for the competent adult, minor child, or incompetent adult.
4. Health maintenance activities mean activities that the minor child or adult is unable to perform for himself or herself.
5. The attending physician, advanced practice nurse, or registered nurse must determine a designated care aide under the direction of a competent adult or caretaker can safely perform the activity in the minor child's or adult's home.
6. Home shall not include nursing home, assisted living facility, residential care facility, an intermediate care facility, or hospice care facility.
7. Health maintenance activities that are not exempted by the Consumer Directed Care Act of 2005 include:
 - a. Physical, psychological, and social assessment which requires nursing judgment, intervention, referral, or follow-up;
 - b. Formulation of the plan of nursing care and evaluation of the client's response to the care rendered;
 - c. Tasks that require nursing judgment or intervention;
 - d. Teaching and health counseling;
 - e. Administration of any injectable medications (intra dermal, subcutaneous, intramuscular, intravenous, intraosseous, or any other form of injection) or intravenous therapy.
 - f. Receiving or transmitting verbal or telephone orders.
8. The designated care aide must demonstrate the ability to safely perform the health maintenance activity.

*Effective ~~December 1, 2005~~
December 1, 2008*

CHAPTER SEVEN RULES OF PROCEDURE

SECTION I

ARKANSAS ADMINISTRATIVE PROCEDURE ACT

RULES UNDER THE NURSE PRACTICE ACT AND NOTICE — HEARING

A. RULES UNDER THE NURSE PRACTICE ACT

Rules, Rule Making, Notice of Hearing, Hearings, Judicial Review, Declaratory Orders, Adjudications, and other procedures authorized by the Arkansas Nurse Practice Act are governed by the Arkansas Administrative Procedures Act §25-15-201 et seq.

~~This exposition of the Rules of Procedure formulated under the Administrative Procedure Act, as amended, Arkansas Code Annotated § 25-15-201 et seq, does not effect a repeal of the provisions of the nurse practice act, its amendments and related laws, except insofar as these Rules of Procedure were formulated under provisions of law which specifically contravenes provisions of the nurse practice act, its amendments and related laws.~~

~~B. NOTICE — HEARING~~

~~Any such rule shall be made or amended only after a hearing upon notice as set forth in these Rules of Procedure.~~

SECTION II

PRIOR RULES

~~PRIOR RULES — VALID~~

~~Rules of the Board formulated previously are declared to be still in force until amended and certified to the Arkansas Register.~~

SECTION III

RULE MAKING

~~In any case of rule-making, every person has a right to seek to cause the Board to act to make a rule. Every person also has the right to seek to cause an incorrect rule to be corrected.~~

SECTION IV

VIOLATION OF RULES

~~A. Willful violation of any rule of the Board, in addition to any other penalty provided by law, shall subject the violator to such denial, suspension, or revocation of approval of a nursing program or license to practice nursing as may be applicable.~~

~~B. The ASBN may require state and federal criminal background checks of any licensee for cause.~~

SECTION V

ORDER

~~A. ORDER — EFFECTIVE ONLY IN WRITING~~

~~—Orders of the Board shall be effective only when in writing.~~

~~B. EFFECTIVE DATE~~

~~—Each order shall contain its effective date and shall concisely state:~~

- ~~1. Its intent or purpose;~~
- ~~2. The grounds on which it is based; and~~
- ~~3. The pertinent provision of law.~~

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~~C. ORDER MAY BE EFFECTUATED~~

~~— An order may be given by service upon or delivery to the person ordered by mail, postage prepaid,~~

~~— addressed to the person at his principal place of business or his home as last of record with the Board. An order may also be served by any officer authorized to serve legal process or by any member of the Board or any employee of the Board. An attempt to serve notice at the last address of record in the Board office shall constitute official notice.~~

~~D. ORDER FORMULATED UPON ADJUDICATION~~

~~There shall be an order formulated upon each adjudication made by the Board or its hearing officer.~~

SECTION VI **DECLARATORY ORDER — RULES**

~~A. DECLARATORY ORDER — PETITION FOR~~

~~Any person who alleges a rule, or its possible application, may injure or threaten to injure him, his business or property, may file a petition for a declaratory order as to the applicability of any rule to be enforced by the Board.~~

~~B. PROMPT DISPOSITION~~

~~— Such petition shall be promptly considered and a prompt disposition shall be made.~~

~~C. STATUS~~

~~Declaratory orders shall have the same status as agency orders formulated upon adjudication.~~

SECTION VII **DECLARATORY ORDER — STATUTES AND ORDERS**

~~Applicability of statutes or department orders as to any person may be determined in the same manner by declaratory orders.~~

SECTION VIII **ADJUDICATION**

~~A. REASONABLE NOTICE~~

~~All parties shall be afforded opportunity for hearing after reasonable notice. (See Section XI, subsection B.3. infra.)~~

~~B. EVIDENCE MAY BE PRESENTED~~

~~Opportunity shall be afforded all people interested in the action to respond and present evidence and argument on all issues involved.~~

~~C. STIPULATION/SETTLEMENT/CONSENT OR DEFAULT NOT PROHIBITED~~

~~Nothing in these rules shall prohibit informal disposition by stipulation, settlement, consent order, or default.~~

~~D. RECORD~~

~~The record shall include:~~

- ~~1. All pleadings, motions, and intermediate rulings;~~
- ~~2. All evidence received or considered, including on request of any party a transcript of all proceedings or any part;~~
- ~~3. A statement of matters officially noticed;~~
- ~~4. Offers of proof, objections, and rulings;~~
- ~~5. Proposed findings and exceptions;~~
- ~~6. All staff memoranda or data submitted to the hearing officer in connection with any staff consideration of the matter.~~

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E. FINDINGS OF FACT

~~Findings of fact shall be based exclusively on the evidence received and on matters officially noticed.~~

SECTION IX **ADJUDICATION—DECISIONS**

A. FINAL DECISION

~~In every case of adjudication there shall be a final decision, or order, which shall be in writing or stated in the record.~~

- ~~1. The final decision shall include findings of fact and conclusions of law each separately stated.~~
- ~~2. The findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying evidence supporting the findings.~~
- ~~3. If any party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding.~~

B. SERVICE OF COPY—DECISION

~~Parties shall be served either personally or by mail with a copy of any decision or order.~~

C. EXEMPTION

~~Where a formal hearing before a hearing officer has been held at which the parties were given proper notice, and at which opportunity was offered to them to be present in person and by counsel to present testimony, briefs, and argument, a proposal for decision will not be required.~~

SECTION X **HEARING OFFICER**

~~Where convenient and appropriate, a hearing officer may be appointed to take testimony and prepare the record for the consideration of the Board. The hearing officer may conduct hearings at any place within the State of Arkansas. In the conduct of such hearings, the hearing officer shall preside and have the power and duties of a presiding official as set forth in Section X.D. The decision on the record made by the hearing officer shall be made by a majority of the members of the Board.~~

A. HEARINGS

~~In every case of adjudication, and in cases of rule making where rules are to be made after hearing, there shall be a hearing.~~

B. RIGHT OF COUNSEL

~~Any person compelled to appear before the Board or a hearing officer shall have the right to counsel.~~

C. IMPARTIALITY

~~Every member of the Board present shall conduct her/himself in an impartial manner and the presiding official may withdraw if she/he deems her/himself disqualified. Any party may file an affidavit of personal bias or disqualification which shall be ruled upon by the Board and granted if it is timely, sufficient, and filed in good faith.~~

D. POWER AND DUTIES OF PRESIDING OFFICIAL

~~The presiding officer of the hearing shall have power to:~~

- ~~1. Administer oaths and affirmations;~~
- ~~2. Maintain order;~~
- ~~3. Rule on all questions arising during the course of the hearing;~~
- ~~4. Hold conferences for the settlement or simplification of the issues;~~
- ~~5. Make or recommend decisions; and~~
- ~~6. Generally, to regulate and guide the course of the proceedings~~

E. BURDEN OF PROOF

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~~— The proponent of a rule or order shall have the burden of proof.~~

F. EVIDENCE EXCLUDED

~~— Irrelevant, immaterial, and unduly repetitious evidence shall be excluded.~~

G. EVIDENCE ADMITTED

~~Any other evidence, oral or documentary, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent person in the conduct of their affairs.~~

H. OBJECTIONS

~~— Objections to evidence may be made and shall be noted of record.~~

I. EVIDENCE MAY BE WRITTEN WHEN

~~When a hearing can be so expedited (and the interests of the parties will not be prejudiced) any part of the evidence may be received in written form.~~

J. CROSS-EXAMINATION

~~Parties shall have the right to conduct such cross-examination as may be required for a full, true disclosure of the facts.~~

K. OFFICIAL NOTICE

~~Official notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts peculiarly within the Board's specialized knowledge.~~

- ~~— 1. Parties shall be notified of material so noticed (including any staff memoranda or data).~~
- ~~— 2. Parties shall be afforded a reasonable opportunity to show the contrary.~~

SECTION XI-II

PROCEDURE ON DENIAL, REPRIMAND, PROBATION, CIVIL PENALTIES, SUSPENSION, OR REVOCATION

A. GROUNDS FOR DISCIPLINE

1. The Board shall have sole authority to deny, suspend, revoke, or limit any license or privilege to practice nursing or certificate of prescriptive authority issued by the Board or applied for in accordance with the provisions of this chapter, or to otherwise discipline a licensee upon proof that the person:
 - a. Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing or engaged in the practice of nursing without a valid license;
 - b. Is guilty of crime or gross immorality;
 - c. Is unfit or incompetent by reason of negligence, habits or other causes;
 - d. Is habitually intemperate or is addicted to the use of habit-forming drugs;
 - e. Is mentally incompetent;
 - f. Is guilty of unprofessional conduct;
 - g. Has had a license, certificate or registration revoked, suspended, placed on probation, or under disciplinary order in any jurisdiction;
 - h. Has voluntarily surrendered a license, certification, or registration, and has not been reinstated in any jurisdiction; or
 - i. Has willfully or repeatedly violated any of the provisions of this chapter.
2. The board shall refuse to issue or shall revoke the license of any person who is found guilty of or pleads guilty or nolo contendere to any offense listed in ACA §17-87-312(e) unless the person requests and the board grants a waiver pursuant to ACA §17-87-312(g).
3. Proceedings under this section shall be as provided in the Arkansas Administrative Procedure Act, as amended, ACA §25-15-201 et seq.

B. PROCEEDINGS

Proceedings shall be as follows.

1. Opportunity for licensee or applicant to have hearing.
Except as provided in subsection 2 below, every licensee or applicant for a license shall be

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- to afforded notice and an opportunity to be heard before the Board. The Board shall have authority take any action the effect of which would be to:
- a. Deny permission to take an examination for licensing for which application has been duly made;
 - b. Deny a license after examination for any cause other than failure to pass an examination;
 - c. Withhold the renewal or reinstatement of a license for any cause;
 - d. Revoke a license;
 - e. Suspend a license;
 - f. Probate a license;
 - g. Reprimand a licensee;
 - h. Levy civil penalties.
2. Suspension of license without prior notice or hearing. If the Board finds that the continued practice by a licensee of the occupation or profession for which he or she is licensed will create an immediate hazard to the public, the Board may suspend the license pending a hearing without prior notice of hearing.
 3. Notice of action or contemplated action by the Board-Request for Hearing-Notice of Hearing.
 - a. When the Board contemplates taking any action of a type specified in paragraphs a. and b. of subsection B.1. supra, it shall give written notice to the applicant at the last address of record in the Board office, including a statement:
 - (1) That the applicant has failed to satisfy the Board of his or her qualifications to be examined or to be licensed, as the case may be;
 - (2) Indicating in what respects the applicant has failed to satisfy the Board; and
 - (3) That the applicant may secure a hearing before the Board by depositing in the mail, within 20 days after service of said notice, a registered letter addressed to the Board containing a request for a hearing.
 1. In any proceeding of the Board involving the denial of a duly made application to take an examination, or refusal to issue a license after an applicant has taken and passed an examination, the burden of satisfying the Board of the applicant's qualifications shall be upon the applicant.
 2. When the Board contemplates taking any action of a type specified in subsections c, d, and e of subsection B.1. supra, it shall give a written notice to the licensee at the last address of record in the Board office, through the Board's attorney, which contains a statement:
 - (1) That the Board has sufficient evidence which, if not rebutted or explained, will justify the Board in taking the contemplated action;
 - (2) Indicating the general nature of the evidence, and detailed allegations of violation of ACA §17-87-309(a)(1-9) the licensee is charged with;
 - (3) That a hearing will be held on a date certain, no sooner than 20 days after the mailing of the notice to the last address of record in the Board office; and at that hearing the Board will receive evidence.
 3. When the Board shall summarily suspend a license pending a hearing, as authorized in subsection B.2 supra, it shall give written notice of the general nature of the evidence and detailed allegations of violation of ACA §17-87-309(a)(1-9) the licensee is charged with:
 - (1) That the Board has sufficient evidence which, if not rebutted or explained, will justify revocation of the license by the Board;
 - (2) Indicating the general nature of the evidence against the licensee;
 - (3) That, based on the evidence indicated, the Board has determined that the continuation of practice of the occupation or profession of the licensee will create an immediate hazard to the public and has therefore suspended the license of the licensee effective as of the date such notice is served;
 - (4) The Board will then set an immediate hearing for a full evidentiary presentation by the licensee and the Board.
 4. In any hearing before the Board involving the suspension or revocation of a license, the burden shall be on the Board to present competent evidence to justify the action taken or proposed by the Board.

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C. CIVIL PENALTIES

The Board may, after providing notice and a hearing, levy civil penalties in an amount not to exceed one thousand dollars (\$1,000.00) for each violation against those individuals or entities found to be in violation of this Chapter or Rules promulgated thereunder.

1. Each day of violation shall be a separate offense.
2. These penalties shall be in addition to other penalties which may be imposed by the Board pursuant to this Chapter.
3. Unless the penalty assessed under this subsection is paid within fifteen (15) calendar days following the date for an appeal from the order, the Board shall have the power to file suit in the Circuit Court of Pulaski County to obtain a judgment for the amount of penalty not paid.

D. ENCUMBRANCE OR SUSPENSION OF DEA REGISTRATION

The APN shall submit his/her DEA Registration to the Board upon request following disciplinary hearing in which the registration is encumbered or suspended.

E. METHOD OF SERVING NOTICE OF HEARING

Any notice required by subsection B.3 above, may be served either personally or by an officer authorized by law to serve process, or by registered mail or certified mail with return receipt requested, directed to the licensee or applicant at his or her last known address as shown by the records of the Board. If notice is served personally, it shall be deemed to have been served at the time when the officer delivers the notice to the person addressed.

F. VENUE OF HEARING

Board hearings held under the provisions of this rule shall be conducted at the Board office or elsewhere in Pulaski County.

G. HEARINGS PUBLIC

Use of Hearing Office — All hearings under this section shall be open to the public. At all such hearings at least a quorum of the Board shall be present to hear and determine the matter.

H. RIGHTS OF PERSONS ENTITLED TO HEARING

A person entitled to be heard pursuant to this section shall have the right to:

1. Be represented by counsel;
2. Present all relevant evidence by means of witnesses and books, papers and documents;
3. Examine all opposing witnesses on any matter relevant to the issues;
4. Have subpoenas and subpoenas duces tecum issued to compel the attendance of witnesses and the production of relevant books, papers and documents upon making written request therefore to the Board; and
5. Have a transcript of the hearing made at his or her own expense ~~as provided in Section VIII.D. hereof.~~

I. POWERS OF THE BOARD IN CONNECTION WITH HEARING

In connection with any hearing held pursuant to the provisions of this section, the Board or its hearing officer shall have power to:

1. Have counsel to develop the case;
2. Administer oaths or affirmations to witnesses called to testify;
3. Take testimony;
4. Examine witnesses;
5. Have a transcript of the hearing made at the expense of the Board; and
6. Direct a continuance of any case.

J. RULES OF EVIDENCE

In proceedings held pursuant to this rule, the Board may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent men in the conduct of serious affairs. The Board may in their discretion exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

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K. FEES — WITNESSES

Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a Circuit Court.

L. MANNER AND TIME OF RENDERING DECISION

After a hearing has been completed, the members of the Board shall proceed to consider the case and as soon as practicable shall render their decision. If the hearing was conducted by a hearing officer, the decision shall be rendered by the Board at a meeting where a quorum of the members of the Board are present and participating in the decision. In any case the decision must be rendered within ninety (90) days after the hearing.

M. SERVICE OF WRITTEN DECISION

Within a reasonable time after the decision is rendered, the Board shall serve upon the person whose license is involved a written copy of the decision, either personally or by registered mail to the last address of record in the Board office. If notice is served personally, it shall be deemed to have been served at the time when the officer delivers the notice to the person addressed. Where notice is served by registered mail, it shall be deemed to have been served on the date borne by the return receipt showing delivery of the notice to the addresses or refusal to accept the notice. An attempt to serve notice at the last address of record shall constitute official notice.

N. PROCEDURE WHERE PERSON FAILS TO REQUEST OR APPEAR FOR HEARING—REOPENING HEARING

If a person duly notified fails to appear for a disciplinary hearing and no continuance has been granted, the Board, or its hearing officer, shall hear the evidence of such witnesses as may have appeared, and the Board shall proceed to consider the matter and dispose of it on the basis of the evidence before it in the manner required by subsection L. of Section ~~XI-I~~. Failure of the licensee to keep the Board informed of a change of address shall not be grounds to have the hearing reopened.

Where because of accident, sickness, or other cause a person fails to appear for a hearing which has been scheduled by the Board, the person may, within a reasonable time, apply to the Board to reopen the proceeding; and the Board, upon finding such cause sufficient, shall immediately fix a time and place for hearing, and give such person notice thereof as required by ~~Sections XI-B.3. and XI-E~~ **Section II**. At the time and place fixed, a hearing shall be held in the same manner as would have been employed if the person had appeared in response to the original notice of hearing.

O. CONTENTS OF DECISION

The decision of the Board shall contain:

1. Findings of fact made by the Board;
2. Conclusions of law reached by the Board;
3. The order of the Board based upon these findings of fact and conclusions of law; and
4. A statement informing the person whose license is involved of his right to request a judicial review and the time within such request must be made.

~~P. JUDICIAL REVIEW~~

~~Judicial review of proceedings under this rule shall be set out in Section XII.~~

SECTION XII **JUDICIAL REVIEW**

~~A. JUDICIAL REVIEW — RULE MAKING~~

~~1. DECLARATORY JUDGMENT~~

~~The validity or applicability of a rule may be determined in an action of declaratory judgment if it is alleged that the rule (or its threatened application) injures or threatens to injure the plaintiff.~~

~~2. VENUE — CIRCUIT COURTS~~

~~An application for declaratory judgment may be brought in the circuit court of Pulaski County.~~

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~~3. BOARD NAMED DEFENDANT~~

~~The Board shall be named defendant.~~

~~4. DECLARATORY JUDGMENT AVAILABLE~~

~~A declaratory judgment may be sought and rendered whether or not the plaintiff requested the Board to act upon the validity or applicability of the questioned rule.~~

B. JUDICIAL REVIEW – FAILURE TO ACT

~~RULE MAKING~~

~~If the Board shall unlawfully, unreasonably, or capriciously fail, refuse, or delay to act in respect to rule-making, any person may sue for an order commanding the Board to act.~~

~~VENUE – CHANCERY COURTS~~

~~The suit may be brought in the chancery court of Pulaski County.~~

C. JUDICIAL REVIEW – FAILURE TO ACT IN ADJUDICATION

~~Any person who considers himself injured by a failure to act in a case of adjudication has the same judicial review as in a matter of failure to act pertaining to rule-making.~~

~~VENUE – CHANCERY COURTS~~

~~The plaintiff may bring suit for an order commanding the Board to act. The suit shall be in the Pulaski Chancery Court.~~

D. JUDICIAL REVIEW – ADJUDICATION

~~In cases of adjudication, any person who considers himself injured in his person, business, or property by final Board action shall be entitled to judicial review.~~

~~1. OTHER REVIEW – NOT EXTINGUISHED~~

~~Nothing in this section shall be construed to limit other means of review provided by law.~~

~~2. VENUE – CIRCUIT COURTS~~

~~Proceedings for review may be instituted by filing a petition in the circuit court of Pulaski County or the county in which the person resides.~~

~~3. TIME~~

~~The petition shall be filed within thirty days after service of the Board's final decision of the adjudication upon petitioner.~~

~~4. SERVICE~~

~~Service shall be had by serving a copy of the petition upon the Board and all other parties of record either by personal service or by mail.~~

~~5. INTERVENORS~~

~~The court may permit other interested parties to intervene.~~

~~6. STAY OF ORDER~~

~~Filing of the petition shall not automatically stay enforcement of the Board decision. The Board, upon its own action, or the reviewing court may stay the order upon such terms as may be just.~~

~~7. RESPONSE~~

~~Response shall be made within thirty (30) days after service of the petition, or within such time as the court may allow, but not exceeding a total of ninety (90) days.~~

~~8. BOARD SHALL TRANSMIT RECORD TO COURT~~

~~The Board shall transmit the record to the reviewing Court.~~

~~a. The record shall be either the original or a certified copy of the entire record.~~

~~b. By stipulation of all parties to the review, the record may be shortened.~~

~~c. The court may require or permit subsequent corrections or additions to the record.~~

~~9. ADDITIONAL EVIDENCE~~

~~Additional evidence may be had if, before the date for hearing, application is made to the Court for leave to present additional evidence.~~

~~a. Must obtain leave of court;~~

~~b. Evidence must be material;~~

~~c. Must show a good reason for failure to present the evidence;~~

~~d. The court may set such conditions as may be just;~~

~~e. The Board may modify its findings and decisions by reason of the additional evidence. If so, that evidence and any modifications, new findings, or decisions shall be filed with the reviewing court.~~

~~10. REVIEW BY COURT WITHOUT JURY~~

~~The review shall be conducted by the court without jury and shall be confined to the record.~~

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~~EXCEPTION:~~

- ~~a. In cases of alleged irregularities in procedure before the Board (not shown in the record) testimony may be taken before the Court.~~
- ~~b. Upon request, the court shall hear oral arguments and receive written briefs~~

~~11. RULING OF REVIEWING COURT~~

~~The reviewing court may affirm the decision of the Board, or it may remand the case for further proceedings. It also may reverse or modify the decision if substantive rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:~~

- ~~a. In violation of constitutional or statutory provisions;~~
- ~~b. In excess of the Board's statutory authority;~~
- ~~c. Made upon unlawful procedure;~~
- ~~d. Affected by other error of law;~~
- ~~e. Not supported by substantial evidence of record, or, if it is arbitrary, capricious, or characterized by abuse of discretion.~~

~~E. JUDICIAL REVIEW — DISCIPLINARY PROCEEDINGS~~

~~In cases of disciplinary proceedings any respondent shall be entitled to judicial review of the final Board action.~~

~~1. VENUE — CIRCUIT COURT~~

~~Proceedings for review may be instituted by filing a petition in the Circuit Court of Pulaski County or the county in which the person resides.~~

~~2. TIME~~

~~The petition shall be filed within thirty (30) days after service of the Board's final decision of the adjudication upon petitioner.~~

~~3. SERVICE~~

~~Service shall be had by serving a copy of the petition upon the president or the secretary of the Board.~~

~~4. STAY OF ORDER~~

~~Filing of the petition shall not automatically stay enforcement of the Board decision. The Board, upon its own action, or the reviewing court may stay the decision or order upon such terms as may be just.~~

~~5. RESPONSE~~

~~Response shall be made within thirty (30) days after service of petition, or within such time as the court may allow, but not exceeding a total of ninety (90) days.~~

~~6. THE BOARD SHALL TRANSMIT RECORD TO COURT~~

~~The Board shall transmit the record to the reviewing court.~~

- ~~a. The record shall be either the original or a certified copy of the entire record.~~
- ~~b. By stipulation of all parties to the review, the record may be shortened.~~
- ~~c. The court may require or permit subsequent corrections or additions to the record.~~

~~7. ADDITIONAL EVIDENCE~~

~~Additional evidence may be had if, before the date for hearing, application is made to the court for leave to present additional evidence.~~

- ~~a. Must obtain leave of court.~~
- ~~b. Evidence must be material.~~
- ~~c. Must show a good reason for failure to present the evidence.~~
- ~~d. The court may set such conditions as may be just.~~
- ~~e. The Board may modify its findings and decisions by reason of the additional evidence. If so, that evidence and any modifications, new findings, or decisions shall be filed with the reviewing court.~~

~~8. REVIEW BY COURT WITHOUT JURY~~

~~The review shall be conducted by the court without a jury and shall be confined to the record.~~

~~a. EXCEPTION~~

~~In cases of alleged irregularities in procedure before the Board (not shown in the record) testimony may be taken before the court.~~

- ~~b. Upon request, the court shall hear oral argument and receive written briefs.~~

~~9. RULING OF REVIEWING COURT~~

~~The reviewing court may affirm the decision of the Board, or it may remand the case for further proceedings. It also may reverse or modify the decision if substantive rights of the petitioner have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:~~

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- ~~a. In violation of constitutional or statutory provisions;~~
- ~~b. In excess of the Board's statutory authority;~~
- ~~c. Made upon unlawful procedure;~~
- ~~d. Affected by other error of law;~~
- ~~e. Not supported by substantial evidence of record, or if it is arbitrary, capricious, or~~
~~characterized by abuse of discretion.~~

SECTION XIII

APPEALS TO THE SUPREME COURT OF ARKANSAS

~~Appeals to the Arkansas Supreme Court from any final action of a chancery or circuit court shall follow the procedure prescribed by law.~~

SECTION XIV III

ENFORCEMENT

A. CIVIL ACTION

The Board may institute such civil suits or other legal proceedings as may be required for enforcement of any provisions of ACA §17-87-101 through §17-87-711 (*Nurse Practice Act*), as amended, and related acts.

B. CRIMINAL ACTION

If the Board has reason to believe that any person has violated any provisions of the *Nurse Practice Act*, as amended, or related acts for which criminal prosecution would be in order, it shall so inform the prosecuting attorney in whose district any such purported violation may have occurred.

SECTION XV IV

DISCIPLINARY PROCEEDINGS

A. DEFINITIONS

1. The term "fraud and deceit" shall include but not be limited to:
 - a. False representation of facts on an application for licensure by examination or licensure by endorsement without examination or on application for renewal of license;
 - b. False representation by having another person in his/her place for the licensing examination or any part thereof;
 - c. Forged or altered documents or credentials as required for the application for original license, application for renewal of license, or application for certificate of prescriptive authority;
 - d. Disclosing the contents of the licensing examination or soliciting, accepting, or compiling information regarding the examination before, during or after its administration;
 - e. Aiding, abetting, assisting, or hiring an individual to violate or circumvent any law or duly promulgated rules intended to guide the conduct of a nurse or other health care provider;
 - f. Prescribing any drug, medicine, or therapeutic device unless certified by the Board as having prescriptive authority.
 - g. Engaging in the practice of nursing without a valid license.
2. The term "gross immorality" shall include but not be limited to acts and conduct inconsistent with the rules and principles of morality which relate to the practice of nursing and the responsibilities of the licensee.
3. The term "negligence" means the failure to do some act of nursing which a licensee should do, guided by those ordinary considerations which regulate the practice of nursing; or the doing of something which a reasonable and prudent licensee would not do under the same or similar facts and circumstances in the practice of nursing. The term "gross negligence" is an exercise of such minimal care as to justify the belief that there was a conscious disregard or indifference for the health, safety, or welfare of the patient or the public and shall be considered a substantial departure from the accepted standard of care. The term "other causes" shall include but not be limited to the inability to practice nursing because of physical and/or psychological impairment.

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4. The term "habitually intemperate or addicted" shall include but not be limited to the use of hallucinogenics, stimulants, depressants, or intoxicants which could result in behavior that interferes with the practice of nursing.
5. The term "mental incompetence" shall include those situations where a court has judged a licensee as incompetent.
6. The term "unprofessional conduct" includes, but is not limited to, the conduct listed below:
 - a. Failing to assess and evaluate a patient's status or failing to institute nursing intervention which might be required to stabilize a patient's condition or prevent complications.
 - b. Failing to accurately or intelligibly report or document a patient's symptoms, responses, progress, medications, and/or treatments.
 - c. Failing to make entries, destroying entries, and/or making false entries in records pertaining to the giving of narcotics, drugs, or nursing care.
 - d. Unlawfully appropriating medications, supplies, equipment, or personal items of the patient or employer.
 - e. Failing to administer medications and/or treatments in a responsible manner.
 - f. Performing or attempting to perform nursing techniques and/or procedures in which the nurse is untrained by experience or education, and practicing without the required professional supervision.
 - g. Violating the confidentiality of information or knowledge concerning the patient except where required by law.
 - h. Causing suffering, permitting or allowing physical or emotional injury to the patient or failing to report the same in accordance with the incident reporting procedure in effect at the employing institution or agency.
 - i. Leaving a nursing assignment without notifying appropriate personnel.
 - j. Failing to report to the Board within a reasonable time of the occurrence, any violation or attempted violation of the Arkansas *Nurse Practice Act* or duly promulgated rules or orders.
 - k. Delegating nursing care functions and/or responsibilities in violation of the Arkansas *Nurse Practice Act* and the Arkansas State Board of Nursing Rules, Chapter 5.
 - l. Failing to supervise persons to whom nursing functions are delegated or assigned.
 - m. Practicing nursing when unfit to perform procedures and make decisions in accordance with the license held because of physical, psychological, or mental impairment.
 - n. Failing to conform to the Universal Precautions for preventing the transmission of Human Immunodeficiency Virus and Hepatitis B Virus to patients during exposure prone invasive procedures.
 - o. Providing inaccurate or misleading information regarding employment history to an employer or the Arkansas State Board of Nursing.
 - p. Failing a drug screen as requested by employer or Board.
 - q. Engaging in acts of dishonesty which relate to the practice of nursing.
 - r. Failure to display appropriate insignia to identify the nurse during times when the nurse is providing health care to the public.
 - s. Failure to repay loans to the Nursing Student Loan Fund as contracted with the Board of Nursing.
 - t. Any other conduct that, in the opinion of the Board, is likely to deceive, defraud, injure or harm a patient or the public by an act, practice, or omission that fails to conform to the accepted standards of the nursing profession.
7. The term "has had a license, privilege to practice, certificate, or registration revoked, suspended or placed on probation or under disciplinary order" refers to actions in any jurisdiction;
8. The term "has voluntarily surrendered a license, privilege to practice, certification, or registration and has not been reinstated" refers to actions in any jurisdiction.
9. The term "willfully" shall include but not be limited to:
 - a. Continuing action after notice by the Arkansas State Board of Nursing;
 - b. Disregarding the expiration date of the license;
 - c. Providing false, incorrect, or incomplete information to the employer regarding the status of the license;
 - d. Performing acts beyond the authorized scope of the level of nursing for which the individual is licensed, and practicing without required professional supervision;

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- e. Failing to follow the *Nurse Practice Act* of the State of Arkansas and its rules.

Effective ~~August 1, 2007~~

Effective December 1, 2008