

ARKANSAS REGISTER

Transmittal Sheet



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Name of Agency Arkansas State Board of Nursing

Department _____

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CHAPTER 7: RULES OF PROCEDURE

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CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 As Amended.

Faith A. Fields

Signature

686-2700

Phone Number

EXECUTIVE DIRECTOR

Title

4-1-97

Date

SHARON PRIEST
SECRETARY OF STATE
STATE OF ARKANSAS

97 APR -2 PM 2:44

MR. PERCIVAL DIV.

FILED

CHAPTER SEVEN RULES OF PROCEDURE

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SECTION I RULES UNDER THE NURSE PRACTICE ACT AND NOTICE — HEARING

SHARON HUBERT
SECRETARY OF STATE
OFFICE OF ARKANSAS
BY _____

A. RULES UNDER THE NURSE PRACTICE ACT

This exposition of the Rules of Procedure formulated under the Administrative Procedure Act, as amended, ACA §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

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.

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;
3. The pertinent provision of law.

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.

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;
6. Generally, to regulate and guide the course of the proceedings.

E. BURDEN OF PROOF

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

A. GROUNDS FOR DISCIPLINE

The Board shall have sole authority to deny or suspend any license 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:

1. Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;
2. Is guilty of crime or gross immorality;
3. Is unfit or incompetent by reason of negligence, habits or other causes;

4. Is habitually intemperate or is addicted to the use of habit-forming drugs;
5. Is mentally incompetent;
6. Is guilty of unprofessional conduct;
7. Has had a license, certificate or registration revoked, suspended or placed on probation or under disciplinary order in any jurisdiction;
8. Has voluntarily surrendered a license, certification or registration and has not been reinstated in any jurisdiction; or
9. Has willfully or repeatedly violated any of the provisions of this chapter.

Proceedings under this section shall be as provided in the Administrative Procedure Act, as amended, § 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 afforded notice and an opportunity to be heard before the Board. The Board shall have authority to 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/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.

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.

- b. 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.
- c. 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.
- d. 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.

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 regulations 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. 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 addressee or refusal of the addressee to accept the notice. An attempt to serve notice at the last address of record shall constitute official notice.

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 therefor 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.

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 the decision is sent by registered mail, it shall be deemed to have been served on the date borne on the return receipt.

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. 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. 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 which 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.

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.

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 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:

 - 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 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 17-87-401 (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 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 and regulations 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.
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.
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 adjudged a licensee as incompetent.
6. The term "unprofessional conduct" which, in the opinion of the Board, is likely to deceive, defraud, or injure patients or the public, means any act, practice, or omission that fails to conform to the accepted standards of the nursing profession and which results from conscious disregard for the health and welfare of the public and of the patient under the nurse's care; and 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. Knowingly or consistently failing to accurately or intelligibly report or document a patient's symptoms, responses, progress, medications, and/or treatments.
 - c. Knowingly or consistently 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, regulations, 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 and Regulations, 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.
7. 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;
 - e. Failing to follow the Nurse Practice Act of the State of Arkansas and its rules and regulations.

Effective September 25, 1995