

# **ARIZONA STATE BOARD OF NURSING** **GUIDELINES FOR CRIMINAL CONDUCT**

ARS 41-1091 (B)

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## **I. INTRODUCTION AND BACKGROUND**

The Board has seen an increase in the number of individuals with criminal backgrounds who are applying for licensure and certification or who have been convicted of felonies and misdemeanors while they hold an active license or certificate. In 1995, the Board received only 4 applications with disclosures of felony convictions. During 1996-1997, the Board received 4-5 applications per month, or approximately 60 applications per year, with disclosures of felony convictions. These numbers reflect a 1400% increase in the number of applicants with disclosures of felony convictions.

There is limited research in the health regulatory area of criminal conduct, length of time needed to determine rehabilitation and the impact of prior criminal conduct on public safety. A 1982 study done on inmates in prisons in California, Michigan, and Texas identified that 50% of the inmates had committed 15 crimes per year before being incarcerated (Criminal Justice?, Edited by R.J. Bidinotto, 1997). A 1983 Bureau of Justice survey showed that of 63% of 108,000 prisoners released early from prison in 11 states were arrested again within 3 years for new felony or serious misdemeanor offenses (Criminal Justice?, Edited by R.J. Bidinotto, 1997).

The Board of Nursing has a legislative duty to protect public health, safety, and welfare. The Board also recognizes that licensed nurses and certified nursing assistants, the disciplines included in its regulatory jurisdiction, are responsible for vulnerable individuals ranging from premature infants to incapacitated elderly persons. With the changes in the delivery of healthcare services over the past five years, the Board realizes that licensed nurses and certified nursing assistants care for patients and families in a variety of settings, including a patient's own home, where there may be limited or no supervision.

In response to the increase in applicants with criminal histories and the Board's mandate to protect the public safety, the following guidelines have been developed.

## **II. OVERVIEW OF THE CRIMINAL JUSTICE SYSTEM IN ARIZONA**

The following information provides a brief overview of the criminal procedures that lead to a conviction. Section A focuses on the criminal procedures that occur after a crime has been reported to a law enforcement agency and the case has been referred to a prosecuting agency. Arizona has three state and one federal prosecuting agencies. The United States Attorney's Office prosecutes all federal crimes. At the state level, city prosecutors prosecute misdemeanor offenses in municipal court. County attorneys and the Arizona Attorney General's Office prosecute felonies in superior court.

Section B highlights the process leading up to a criminal conviction. Approximately 90% of all criminal convictions in Maricopa County are the result of a guilty plea. The other 10% are the result of a guilty jury verdict. In both situations, a guilty plea and a guilty jury verdict, result in a criminal conviction.

Section C is an overview of the sentencing phase following conviction. Prior to imposing the sentence, the trial court is required to evaluate evidence from a variety of sources. The trial court then imposes an individualized sentence based on the offender and the offense.

## **A. Charging a Criminal Case**

A criminal case is charged by either the grand jury or a criminal complaint. If a case is charged by the grand jury, the prosecutor presents evidence to the grand jurors. The grand jury issues a “true bill,” indicating that a crime has been committed and the defendant is the perpetrator. The grand jury proceedings remain secret until the “true bill”/indictment is issued. The grand jury indictment is then filed in superior court and is contained in the defendant’s court file.

The state may file a criminal complaint. The complaint is filed under oath by a peace officer alleging the offense. Complaints are usually filed in city court.

After the offense is charged, the defendant is then serviced with a criminal summons to appear in court. A summons is the preferred method as opposed to an arrest warrant. Rule 3.1(b), Ariz. R. Crim. P. If the defendant fails to honor the summons, the trial court issues a warrant for the defendant’s arrest.

The defendant makes an initial appearance before a magistrate. Rule 4.2, Ariz. R. Crim. P. If the defendant fails to honor the summons, the trial court issues a warrant for the defendant’s arrest.

The defendant makes an initial appearance before a magistrate. Rule 4.2, Ariz. R. Crim. P. The magistrate informs the defendant of the charges against him/her, determines the defendant’s release, and appoints counsel if the defendant is eligible. A defendant who is charged by complaint is entitled to a preliminary hearing for a determination of probable cause. Rules 4.2 and 5.2, Ariz. R. Crim. P. The defendant charged by indictment is not entitled to a preliminary hearing because the grand jurors made a finding of probable cause prior to their issuance of the “true bill.”

## **B. Trial/Guilty Plea**

A criminal case may be resolved either by a guilty verdict following trial or by the entry of a guilty (or no contest) plea. Both result in a criminal conviction.

A defendant who proceeds to trial is entitled to representation if he/she is unable to afford an attorney. As in civil cases, the defendant makes all the substantive decisions about the case after receiving advice from defense counsel.

The criminal case then proceeds to discovery. The criminal discovery rules are very liberal. There is no trial by ambush in Arizona; both parties have a duty to disclose prior to trial. The trial court has broad discretion to sanction parties who fail to timely disclose witnesses or required discoverable material. Following discovery, the state might offer the defendant a plea. In the event of a plea offer, the negotiations can be extensive and time consuming.

If the defendant proceeds to trial, the state is bound by strict time deadlines. The rules of evidence apply in a criminal trial, unlike in an administrative hearing. The state has the burden of proving each element of a criminal offense beyond a reasonable doubt. This is the highest standard of proof (much higher than the preponderance of the evidence standard applied in administrative hearings). The defendant is not required to testify and the jurors are instructed that they cannot consider the defendant's silence in deciding the case. The defendant is entitled to an 8-person jury when the possible sentence is under 30 years. The defendant is entitled to a 12-person jury for capital offenses and cases that carry a possible sentence of 30 years or more. The jury verdict must be unanimous to either convict or acquit the defendant. If the jury is "hung", the state can retry the defendant.

A defendant who enters a guilty or no contest plea is afforded significant constitutional protections under the United States and Arizona Constitutions. These protections are codified in the Arizona statutes and in the Rules of Criminal Procedure. The trial court is required to advise a defendant of his or her rights and the consequences of pleading guilty or no contest. Rule 17.2. Ariz. R. Crim. P. The trial court must determine whether the defendant knowingly, voluntarily and intelligently entered the plea. The defendant is questioned in detail, on the record, in the trial court regarding whether any force, threats, or promises were made to induce the plea. The defendant must also provide the trial court with the "factual basis" for the plea; meaning the defendant must admit that he/she committed the elements of the offense. The failure of the trial court to follow the rules of criminal procedure may be grounds for setting aside the plea. The Arizona Supreme Court has rejected a defendant's later claim that he pled guilty, but did not mean what he had avowed to the court, because accepting the claim would in effect mean that the trial court condoned perjury.

### **C. Sentencing**

The trial court is the decision-maker in determining the appropriate sentence. (In some states the jury imposes the sentence.) The options available to the trial court include imprisonment, or various types of probation. The trial court is bound by the sentencing guidelines passed by the state legislature. The legislature has determined that certain offenses warrant a more stringent sentence. Some of those offenses include drug offenses, crimes committed with a deadly weapon or a dangerous instrument, crimes against children, crimes committed while on release (probation, out of custody, parole), and crimes committed by repeat offenders. For example, a defendant found guilty of a dangerous crime against children in the first degree (e.g. crimes of violence, sexual conduct and sexual abuse, commercial sexual exploitation of a minor, and kidnapping) "shall be sentenced to a presumptive term of imprisonment for 20 years." A.R.S. § 13-604.01(A).

Also, a defendant who commits an offense while released on bail or on the defendant's own recognizance "shall be sentenced to a term of imprisonment 2 years longer than would otherwise be imposed." A.R.S. § 13-604(R).

The trial court has the discretion to sentence a defendant to a term of imprisonment within the statutory guidelines. A.R.S. § 13-702-10. The sentence ranges includes a mitigated, presumptive, and aggravated term of imprisonment. Felonies range from a class 2 felony to a class 6 felony. A class 2 felony is the most serious offense other than first-degree murder. A class 6 felony is the least serious felony. The sentencing range for felonies increases with the seriousness of the offense.

Prior to imposing sentence, the trial court must consider the aggravating circumstances presented by the state and the mitigating circumstances presented by the defendant. The trial court also considers the probation officer's recommendation and the victim's statement.

The trial court is not required to accept the aggravating and mitigating circumstances at face value. Rather, the trial court has the discretion to evaluate the relevance and credibility of evidence. For example, often times the defendant will express remorse of their offense. The trial court determines whether a defendant's expression of remorse is genuine. In some cases the trial court finds that the defendant is only remorseful for getting caught and facing a prison term. Additionally, in capital cases, the Arizona Supreme Court has consistently rejected a defendant's claim in mitigation that they were raised in an abusive childhood, finding that, "The remedy for one who has been molested is not to molest others and ask to be excused, but rather to submit to therapy, which, as noted above, defendant has repeatedly refused to do." *State v. Atwood*, 171 Ariz. 576, 655, 832 P.2d 593, 679 (1992).

If the defendant is convicted of a probation eligible offense, the trial court may suspend the imposition of a prison sentence and impose probation. There are many types of probation including intensive probation (A.R.S. § 13-913), supervised probation, and unsupervised probation. A.R.S. § 901. In all types of probation, the trial court has the discretion to sentence the defendant to serve 1 year in jail. Intensive probation has very strict requirements, including that the defendant must contact his/her probation officer on a weekly basis, must be employed, actively seeking employment, or in school. The length of probation ranges from 7 years for a class 2 felony, to 3 years for a class 5 or 6 felony. A.R.S. § 13-902(A). These periods of probation may be shortened or lengthened by the trial court. Additionally, the trial court has the discretion to impose lifetime probation for defendants who are convicted of sexual offenses, sexual exploitation of children, and child or vulnerable adult abuse.

The trial court also has the option at sentencing to classify a class 6 felony as an "open-ended offense" or an "undesignated offense." Following the defendant's successful completion of probation, the trial court has the discretion to designate the offense as a misdemeanor. This provides further incentive for the defendant to comply with probation. A class 6 undesignated felony offense is considered a felony for all purposes until the trial court makes a final designation.

Following a sentence of imprisonment, the defendant has 30 days to file a notice of appeal in the Arizona Court of Appeals. The defendant is entitled to legal representation on appeal. If the defendant is unsuccessful in his/her direct appeal, he/she can file a petition for review in the Arizona Supreme Court. The Arizona Supreme Court has discretionary review of petitions for review and accepts only 10% of the petitions filed.

### III. BOARD OF NURSING INVESTIGATION TECHNIQUES USED IN CASES INVOLVING CRIMINAL CONDUCT:

All self disclosures or complaints of criminal conduct resulting in arrests and convictions in a court of law will be investigated by the Board utilizing the following investigation strategies.

#### **A. Investigation Process**

The following steps outline the standard process used during the investigation of a criminal complaint (Note: this process will be altered on the basis of the perceived impact of the offense

on public safety. If there is a concern for imminent risk of the public safety, the case will be considered for a possible summary suspension):

- Self disclosure or complaint is triaged and assigned to Board investigator.
- The applicant or licensee/certificate holder (L/CH) and/or the complainant will be notified by mail of the pending investigation and the identity of the investigator.
- A questionnaire pertaining to arrests will be sent to the applicant or L/CH to complete and return to the assigned Board investigator.
- The Board investigator may contact the applicant L/CH when the questionnaire is returned or wait until subpoenaed documents are received.
- Subpoenas for arrest and conviction information are sent (see section below on specific information to be included in subpoenas).
- Subpoenas will also be sent for employment records and patient records, if applicable
- Probation or parole officer is interviewed (often a phone interview).
- Additional interviews are conducted, if applicable, e.g. witnesses, employers.
- Follow up phone calls to courts or police departments must be done for records that have not been received or could not be obtained, or on records which require further clarification.

The applicant or L/CH is interviewed and informed of the investigative process, possible outcomes, time frame for investigation and the right to a hearing. The applicant or L/CH is interviewed to obtain information about the criminal conduct, the arrest(s), court sentencing and completion of court mandated requirements. The applicant or L/CH is also asked for any documents, persons to interview, letters from sponsors or letters of recommendation the applicant or L/CH feels important to the investigation.

## **B. Subpoenas to Courts**

Information that may be included in a subpoena to a court include:

1. Request for charging document, e.g., grand jury indictment or criminal complaint,
2. Request for the plea agreement,
3. Request any changes in the plea agreement, if applicable,
4. Request minute entry of judgment of conviction,
5. Request for pre-sentencing documents,
6. Request for minute entry for change of plea,
7. Request for the conditions of probation,
8. Request for the petition to revoke, if applicable,
9. Request for minute entry revoking probation, if applicable, and
10. Request for the minute entry of the sentence.

## **C. Investigative Analysis**

In each case the investigator analyzes:

- Information provided by the applicant or L/CH e.g., is information concerning the events surrounding the arrest consistent with the information contained in police and court documents, can the applicant or L/CH explain any differences?
- Was new information received during the investigation, e.g., arrests or convictions that were not disclosed on Board or employment applications?

- Did the applicant disclose prior criminal history to employers?
- What was the nature of the criminal act? Did it involve a crime against a patient or vulnerable person?
- Are there extenuating circumstances that lead to the criminal conduct?
- Is the arrest or conviction a one time act or part of a pattern of behavior?
- How long ago did the arrest or conviction occur?
- What was the age of the applicant or L/CH when the event occurred?
- Is the applicant or L/CH in the same living conditions as when the event occurred i.e. living with the same partner or associating with the same friends?
- What type of rehabilitation activities has the applicant or L/CH completed and what type of rehabilitation activities is the applicant or L/CH currently pursuing? Is there proof of their involvement/completion of these rehabilitative activities?
- How has the applicant or L/CH performed in the work environment, particularly a health care work environment?
- What has the applicant or L/CH stated he or she learned from the situation? How would he or she react if he or she encountered a similar situation again?
- Does the applicant or L/CH express remorse about or accept responsibility for the arrest/conviction?

#### **D. Investigative Referrals**

Once the above factors have been considered, the Board investigator will review the content of the investigation to determine if:

1. the case should proceed along the normal investigative process,
2. an evaluation is needed to determine the applicant or L/CH's risk to public safety,
3. the applicant or L/CH is an imminent risk to public safety and a summary suspension should be considered,
4. the circumstances of the offense are serious enough to warrant revocation,
5. there is a need for referral to a criminal investigative agency.

If, after review, the investigator feels an evaluation is necessary to determine whether the applicant or L/CH is safe to practice, the investigator will refer the applicant or L/CH to a professional with specific expertise in the area of concern. Once the applicant or L/CH has confirmed the scheduling of an appointment, the investigator will send a letter to the evaluator, including pertinent documents, identifying the presenting problem, concerns of the Board, questions the evaluator should address, need for and possibility of improvement of the behavior of concern with treatment, and safety to practice with suggestions for work restrictions and monitoring reports to the Board.

If, after review, the investigator feels that the applicant or L/CH's behavior is an imminent threat to public health and safety, then the main objective is to remove the applicant or L/CH from practice as soon as possible. In this case, the investigator would meet with the Executive Director and the Assistant Attorney General to discuss possible summary suspension. If a summary suspension is not felt to be appropriate, the Executive Director, with the advice of the Assistant Attorney General, may agree to offer a consent agreement for revocation.

The investigator will also consider if a referral is needed to the appropriate law enforcement entity regarding the complaint (if a referral has not already been made). A referral to a law enforcement entity may be delayed if, in the judgment of the investigator, such a referral would jeopardize the Board’s investigation.

**IV. DISCIPLINARY GUIDELINES**

Proposed changes to the Nurse Practice Act restrict individuals with felony convictions whose date of absolute discharge is less than five years from the date of application from being eligible to apply to become a licensed nurse or certified nursing assistant. Further, if a licensed nurse or certified nursing assistant commits a felony offense, he or she is no longer eligible to retain a license or certificate and his or her license or certificate will be revoked.

Granting of licensure or certification for applicants, and continuance of licensure or certification for licensed nurses and certified nursing assistants convicted of misdemeanor offenses or whose felony convictions and completion of sentencing occurred more than 5 years prior to the date of application, will be decided by the Board. The Board will exercise its discretion in evaluating each application or complaint on a case by case basis.

The following disciplinary guidelines incorporate current provisions in the Nurse Practice Act, proposed revisions to the Nurse Practice Act, the data presented earlier in this document, and decisions made by the Board in 1997 concerning applicants, licensees, and certificate holders with felony convictions. These guidelines provide background information for the Criminal Conduct Discipline Model presented on page 14. The guidelines will be revised as additional Board data and research are analyzed and the impact on public safety is evaluated.

**DISCIPLINARY GUIDELINES**  
(Basis for the Criminal Conduct Disciplinary Model)

<b><u>Criminal Conduct *</u></b>	<b><u>Options**</u></b>
<p>Applicants with 1-2 felony convictions and sentencing guidelines completed (absolute discharge) for more than 5 years from date of application.</p> <ul style="list-style-type: none"> <li>• Conviction(s) did NOT involve               <ul style="list-style-type: none"> <li>• crimes against a patient or children, includes abuse or patient harm.</li> <li>• sexual offenses and/or other offenses committed with a dangerous instrument or deadly weapon</li> <li>• personal use or involvement with illegal drugs</li> </ul> </li> </ul>	<p><u>Applicants:</u></p> <ol style="list-style-type: none"> <li>1. Grant licensure or certification, contingent on passing applicable exams, with letter of concern for criminal conduct.</li> <li>2. Grant licensure, contingent on passing applicable exams, with civil penalty for failure to disclose criminal conduct, if applicable, on Board’s application.</li> <li>3. Grant licensure contingent on passing applicable exams and signing Practice/Monitoring probation.</li> <li>4. Deny licensure or certification due to criminal conduct.</li> </ol>

<u><b>Criminal Conduct *</b></u>	<u><b>Options**</b></u>
<p>Applicants with 1 - 2 felony convictions and sentencing requirements completed (absolute discharge) for more than 5 years from date of application.</p> <ul style="list-style-type: none"> <li>• Conviction(s) involve <ul style="list-style-type: none"> <li>• crimes against a patient or children, includes abuse or patient harm.</li> <li>• sexual offenses and/or other offenses committed with a dangerous instrument or deadly weapon</li> <li>• personal use or involvement with illegal drugs</li> </ul> </li> </ul>	<p><u>Applicants:</u></p> <ol style="list-style-type: none"> <li>1. Deny licensure or certification due to criminal conduct.</li> <li>2. Grant licensure contingent on passing exams and contingent upon signing a consent agreement for CD probation.</li> <li>3. Grant licensure contingent on passing applicable exams and contingent upon signing a Practice/Monitoring probation.</li> <li>4. Grant licensure contingent on passing applicable exams and acceptance into CANDO program.</li> <li>5. Grant licensure or certification, contingent on passing applicable exams, with a letter of concern for the criminal conduct.</li> <li>6. Grant licensure, contingent on passing applicable exams, with a civil penalty for failure to disclose criminal conduct, if applicable, on Board's application.</li> </ol>
<p>Applicants with more than 2 felony convictions and sentencing requirements completed (absolute discharge) for more than 5 years from date of application.</p>	<p><u>Applicants:</u></p> <ol style="list-style-type: none"> <li>1. Deny licensure or certification due to criminal conduct.</li> <li>2. Grant licensure contingent on passing exams and contingent upon signing a consent agreement for CD probation.</li> <li>3. Grant licensure contingent on passing applicable exams and contingent upon signing a Practice/Monitoring probation.</li> <li>4. Grant licensure contingent on passing applicable exams and acceptance into CANDO program.</li> <li>5. Grant licensure or certification contingent on passing applicable exams with a letter of concern for the criminal conduct.</li> <li>6. Grant licensure contingent on passing applicable exams with a civil penalty for failure to disclose criminal conduct, if applicable, on Board's application</li> </ol>
<p>Licensees or certificate holders with felony conviction(s) since date licensed, certified or renewed.</p>	<p><u>Licensees/certificate holders:</u></p> <ol style="list-style-type: none"> <li>1. Revocation of license or certificate.</li> </ol>

<u><b>Criminal Conduct *</b></u>	<u><b>Options**</b></u>
	<ol style="list-style-type: none"> <li>2. Summary suspension for licensee/certificate holder if behavior is an imminent threat to public safety.</li> <li>3. Adopt court sentence if revocation ordered by court and issue Notice of Revocation.</li> </ol>
<p>Applicants, licensees, or certificate holders with 1-2 misdemeanor convictions and sentencing requirements completed.</p> <ul style="list-style-type: none"> <li>• Convictions do NOT involve <ul style="list-style-type: none"> <li>• crimes against a patient or children, includes abuse or patient harm.</li> <li>• sexual offenses and/or other offenses committed with a dangerous instrument or deadly weapon</li> <li>• personal use or involvement with illegal drugs</li> </ul> </li> </ul>	<p><u>Applicants:</u></p> <ol style="list-style-type: none"> <li>1. Grant licensure or certification.</li> <li>2. Grant licensure or certification, contingent on passing applicable exams, with letter of concern for criminal conduct.</li> <li>3. Grant licensure, contingent on passing, with civil penalty for failure to disclose criminal conduct on, if applicable, Board's application.</li> </ol> <p><u>Licensees/certificate holders:</u></p> <ol style="list-style-type: none"> <li>4. Dismiss the complaint.</li> <li>5. Issue letter of concern for criminal conduct.</li> <li>6. Decree of Censure for criminal conduct.</li> </ol>
<p>Applicants, licensees, or certificate holders with 1-2 misdemeanor convictions and sentencing requirements completed.</p> <ul style="list-style-type: none"> <li>• Conviction(s) involve <ul style="list-style-type: none"> <li>• crimes against a patient or children, includes abuse or patient harm.</li> <li>• sexual offenses and/or other offenses committed with a dangerous instrument or deadly weapon</li> <li>• personal use or involvement with illegal drugs</li> </ul> </li> </ul>	<p><u>Licensees/certificate holders:</u></p> <ol style="list-style-type: none"> <li>1. Allow licensee to enter CANDO program.</li> <li>2. Place licensee on CD probation.</li> <li>3. Place licensee on Practice/Monitoring probation.</li> <li>4. Suspend license pending applicable treatment.</li> <li>5. Deny licensure or certification due to criminal conduct.</li> <li>6. Issue licensee a Decree of Censure.</li> <li>7. Issue interim order for evaluation by a professional with expertise in the area of concern.</li> <li>8. Issue letter of concern for criminal conduct.</li> </ol> <p><u>Applicants:</u></p> <ol style="list-style-type: none"> <li>9. Grant licensure contingent on passing applicable exams and contingent upon signing a consent agreement for CD probation.</li> <li>10. Grant licensure contingent on passing applicable exams and contingent upon signing a Practice/Monitoring probation.</li> <li>11. Grant licensure contingent on passing applicable exams and acceptance into CANDO program.</li> <li>12. Grant certification or licensure contingent on passing applicable exams with letter of concern for the criminal conduct.</li> <li>13. Grant licensure contingent on passing applicable exams with a civil penalty for failure to disclose criminal conduct, if applicable, on Board's application.</li> </ol>

<u><b>Criminal Conduct *</b></u>	<u><b>Options**</b></u>
<p>Applicants, licensees, or certificate holders with 3 or more misdemeanor convictions within the past 5 years.</p>	<p><u>Licensees/certificate holders:</u></p> <ol style="list-style-type: none"> <li>1. Revocation of license or certificate if pattern of conduct presents imminent threat to public safety.</li> <li>2. Issue interim order for evaluation by a professional with expertise in the area of concern.</li> <li>3. Suspend license pending applicable treatment.</li> <li>4. Place licensee on CD probation.</li> <li>5. Place licensee on Practice/Monitoring probation.</li> <li>6. Allow licensee to enter CANDO program.</li> <li>7. Issue licensee a Decree of Censure.</li> <li>8. Deny licensure or certification due to criminal conduct.</li> </ol> <p><u>Applicants:</u></p> <ol style="list-style-type: none"> <li>9. Issue letter of concern for criminal conduct.</li> <li>10. Grant licensure contingent on passing applicable exams and contingent upon signing a consent agreement for CD probation.</li> <li>11. Grant licensure contingent on passing applicable exams and contingent upon signing a Practice/Monitoring probation.</li> <li>12. Grant licensure contingent on passing applicable exams and acceptance into CANDO program.</li> <li>13. Grant certification or licensure contingent on passing applicable exams with letter of concern for the criminal conduct.</li> <li>14. Grant licensure contingent on passing applicable exams with a civil penalty for failure to disclose criminal conduct, if applicable, on Board's application.</li> </ol>
<p>Applicants, licensees, or certificate holders with 3 or more misdemeanor convictions all occurring more than 5 years from date of disclosure/report.</p>	<p><u>Applicants:</u></p> <ol style="list-style-type: none"> <li>1. Grant licensure or certification, contingent on passing applicable exams, with letter of concern for criminal conduct.</li> <li>2. Grant licensure or certification, contingent on passing applicable exams, with civil</li> </ol>

<u><b>Criminal Conduct *</b></u>	<u><b>Options**</b></u>
	<p>penalty for failure to disclose criminal conduct, if applicable, on Board's application.</p> <ol style="list-style-type: none"> <li>3. Grant licensure contingent on passing applicable exams and acceptance into CANDO program.</li> </ol> <p><u>Licensee/certificate holders:</u></p> <ol style="list-style-type: none"> <li>4. Issue letter of concern for criminal conduct.</li> <li>5. Issue interim order for evaluation by a professional with expertise in the area of concern.</li> <li>6. Allow licensee to enter CANDO program.</li> <li>7. Order 1-3 years applicable probation for licensee.</li> <li>8. Deny licensure or certification due to criminal conduct.</li> <li>9. Revocation of license or certificate.</li> </ol>
<p>Applicants with misdemeanor conviction involving moral turpitude and sentencing requirements complete for more than 5 years from date of application.</p> <p>Examples of moral turpitude:</p> <ol style="list-style-type: none"> <li>1. Offenses involving dishonesty such as: <ul style="list-style-type: none"> <li>forgery,</li> <li>fraud,</li> <li>theft,</li> <li>misrepresentation,</li> <li>perjury.</li> </ul> </li> <li>2. Crimes involving corrupt public morals, such as: <ul style="list-style-type: none"> <li>prostitution,</li> <li>indecent exposure,</li> <li>sale of pornography to minors.</li> </ul> </li> </ol>	<p><u>Applicants:</u></p> <ol style="list-style-type: none"> <li>1. Grant licensure or certification, contingent on passing applicable exams, with letter of concern for criminal conduct.</li> <li>2. Grant licensure, contingent on passing applicable exams, with civil penalty for failure to disclose criminal conduct, if applicable, on Board's application.</li> <li>3. Grant licensure contingent on passing exam and contingent upon signing Practice/Monitoring probation.</li> <li>4. Deny licensure or certification due to criminal conduct.</li> </ol>
<p>Applicants, licensees, or certificate holders with misdemeanor conviction involving moral turpitude within 5 years of date of application.</p>	<p><u>Licensees/certificate holders:</u></p> <ol style="list-style-type: none"> <li>1. Revocation of license or certificate.</li> <li>2. Summary suspension for licensee/certificate holder if conduct presents imminent threat to public safety.</li> <li>3. Suspend license pending applicable treatment.</li> <li>4. Order 1-3 years applicable probation for licensee.</li> <li>5. Issue interim order for evaluation by a professional with expertise in the area of concern.</li> <li>6. Issue licensee a Decree of Censure.</li> </ol>

<b><u>Criminal Conduct *</u></b>	<b><u>Options**</u></b>
	<ol style="list-style-type: none"> <li>7. Issue letter of concern for criminal conduct.</li> </ol> <p>Applicants:</p> <ol style="list-style-type: none"> <li>8. Deny licensure or certification due to criminal conduct.</li> <li>9. Grant licensure contingent on passing applicable exams and contingent upon signing a consent agreement for CD probation.</li> <li>10. Grant licensure contingent on passing applicable exams and contingent upon signing a Practice/Monitoring probation.</li> <li>11. Grant certification or licensure on passing applicable exams with a letter of concern for the criminal conduct.</li> <li>12. Grant licensure contingent on passing applicable exams with a civil penalty for failure to disclose criminal conduct, if applicable, on Board's application.</li> </ol>
<p>*Undesignated offenses are considered felony offenses until designated as misdemeanors by the court.</p>	<p>**Options listed in order of decision most often made.</p>

## DISCIPLINARY MODEL

The Criminal Conduct Disciplinary Model below reflects historic issues of concern for the Board as well as incorporating patterns of Board decisions from 1997. The model is intended to provide an objective decision making process and allow decisions to be quantified. The model will be piloted over the next year.

The following assumptions were used in creating the criminal conduct disciplinary model:

1. Key areas evaluated when making decisions can be divided into 3 main sections.
2. Risk factors need to be further defined by severity factors
3. Board discretion is not quantified
4. The model should be accurate approximately 85% of the time

### CRIMINAL CONDUCT DISCIPLINARY MODEL

<b>MINIMAL Risk to Public Safety 0-13 points</b>	<b>MODERATE Risk to Public Safety 14 - 30 points</b>
<p>Options:</p> <ol style="list-style-type: none"> <li>1. Grant licensure or certification.</li> <li>2. Grant licensure or certification, contingent on passing applicable exams, with letter of concern for criminal conduct.</li> <li>3. Grant licensure, contingent on passing applicable exams, with civil penalty for failure to disclose criminal conduct, if applicable, on Board's application.</li> <li>4. Dismiss the complaint.</li> <li>5. Issue letter of concern for criminal conduct.</li> <li>6. Issue Decree of Censure.</li> </ol>	<p>Options:</p> <ol style="list-style-type: none"> <li>1. Grant licensure contingent on passing applicable exams and acceptance into CANDO program.</li> <li>2. Issue interim order for evaluation by a professional with expertise in the area of concern.</li> <li>3. Allow licensee to enter CANDO program.</li> <li>4. Order 1-3 years applicable probation for licensee.</li> <li>5. Summary Suspension if behavior presents imminent threat to public safety.</li> </ol> <p><i>If point count is in the low range, consider:</i></p> <ol style="list-style-type: none"> <li>1. Grant licensure or certificate, contingent on passing applicable exams, with letter of concern for criminal conduct.</li> <li>2. Grant licensure contingent on passing applicable exams and acceptance into CANDO program.</li> <li>3. Issue letter of concern for criminal conduct.</li> <li>4. Issue Decree of Censure.</li> </ol>
<b>HIGH Risk to Public Safety 31 - 46 points</b>	<b>SEVERE RISK to Public Safety 47 - 60 points</b>
<p>Options:</p> <ol style="list-style-type: none"> <li>1. Deny licensure or certification due to criminal conduct.</li> <li>2. Revocation of license or certificate.</li> <li>3. Summary suspension for licensee or certificate holder if conduct presents imminent threat to public safety.</li> <li>4. Suspend license pending applicable treatment.</li> <li>5. Order 1-3 years applicable probation for licensee.</li> </ol>	<p>Options:</p> <ol style="list-style-type: none"> <li>1. Summary suspension for licensee/certificate holder if conduct presents imminent threat to public safety.</li> <li>2. Deny licensure or certification due to criminal conduct.</li> <li>3. Revocation of license or certificate.</li> </ol>

## METHODOLOGY

Risk factors (add the values of time and number indices) + Investigative Analysis + Employment Factors = Board Options

### SCORING GRID TO USE IN EVALUATING CASES WITH CRIMINAL CONDUCT

Points are accumulated due to affirmative responses		
<b>Risk Factors *</b> <b>(4-60 pts)</b>	<b>Investigative Analysis</b> <b>(0-15 pts)</b>	<b>Employment Factors</b> <b>(0-10 pts)</b>
<ul style="list-style-type: none"> <li>Crimes against a patient or children, including abuse or patient harm. (6)</li> <li>Crimes involving sexual offenses and/or other offenses committed with a dangerous instrument or deadly weapon. (6)</li> <li>Involves personal use of illegal drugs (3)</li> <li>Crime involves illegal drugs (3)</li> <li>Other type of conviction (2)</li> </ul> <p style="text-align: center; margin-top: 20px;">*Choose one risk factor, then apply the severity indices listed below</p>	<ul style="list-style-type: none"> <li>Applicant/respondent provides false information to Board (5)</li> <li>Applicant/respondent provides false information to employer(s) (4)</li> <li>Applicant/respondent presently participates in prior behavior(s) or with prior contacts (2)</li> <li>Applicant/respondent has NOT participated in rehab activities (2)</li> <li>Applicant/respondent has no remorse or accepts no accountability for behavior (1)</li> <li>Applicant/respondent has a high probability of repeating behaviors. (1)</li> </ul>	<ul style="list-style-type: none"> <li>Applicant/respondent has poor work performance (3)</li> <li>Applicant/respondent has practice issues (3)</li> <li>Applicant/respondent has positive pre-employment and or other drug screens (2)</li> <li>Applicant/respondent has not been employed for greater than 1 year (1)</li> <li>Applicant/respondent has had more than two employers in the past 5 years (1)</li> </ul>

#### SEVERITY INDICES\*

<p><b>Index A<sup>1</sup></b> = Length of time (misdemeanor) Length of time since most recent misdemeanor conviction. Multiply the risk factor score by:</p>	<b>OR</b>	<p><b>Index A<sup>2</sup></b> = Length of time (felony) Length of time since most recent felony conviction. Multiply the risk factor score by:</p>
<p>5 - if the misdemeanor occurred within the past year                      4 - if the misdemeanor occurred within the past 1-2 years                      3 - if the misdemeanor occurred within the past 3-4 years                      2 - if the misdemeanor occurred within the past 5 years                      1 - if the misdemeanor occurred more than 5 years ago</p>		<p>5 - if felony occurred 5 years ago                      3 - if felony occurred within past 6-10 years                      1 - if felony occurred more than 10 years ago.</p>

<p><b>Index B</b> = Number of convictions. Multiply the risk factor score by:</p>
<p>5 - if person has 3 or more convictions.                      3 - if person has 2 convictions                      1 - if person has 1 conviction</p>

**EXAMPLE 1**

CNA Applicant with 1997 sexual abuse conviction, falsified information to Board and employer and had employment issues.

SCORING:

Risk factors:

Crime against patient (6) x 5 (time index) = 30

Crime against patient (6) x 1 (number index) = 6

Subtotal 36

Investigative Analysis

Non-disclosure to Board and employer 9

Employment factors

Poor work performance and practice issues 6

Total 51

51 points on the model is in the Severe Risk to Public Safety section, with Board options of Summary Suspension, Revocation, or Denial.

The Board denied certification to this CNA applicant.

**EXAMPLE 2**

LPN Applicant with 1985 felony weapon conviction, 1986 felony fraud conviction, no disclosure or employment issues.

SCORING:

Risk factors:

Other conviction (2) x 1 (time index) = 2

Other conviction (2) x 3 (number index) = 6

Subtotal 8

Investigative Analysis 0

Employment factors 0

Total 8

8 points on the model is in the Minimal Risk to the public section, with Board options to grant licensure/certification, issue letter of concern, or civil penalty.

The Board granted this LPN a license.