

**Substantive Policy Statement
Arizona State Board of Nursing**

**Revised Guidelines and Criteria for Executive Director or Designee
Closing of Complaints Resolved Through Settlement**

January 31, 2014

This Substantive Policy Statement is advisory only. A Substantive Policy Statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on the regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedures Act. If you believe that this Substantive Policy Statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes Section 41-1033 for a review of the statement. (ARS § 41-1091)

32-1605.01. Executive director; compensation; powers; duties

- C. If the board adopts a substantive policy statement pursuant to section 41-1091 and the executive director or designee reports all actions taken pursuant to this subsection to the board at the next regular board meeting, the executive director or designee may:
3. Close complaints resolved through settlement.

Reference: ARS 32-1605.01(3); Board approved policies May 21, 2009 Guidelines and Criteria for Executive Director or Designee Closing of Complaints Resolved Through Settlement; Criteria For Opening Complaints/Investigations; Investigative Guidelines; Alcohol and/or Drugs Investigative and Disciplinary Guidelines; Administrative Violation; Administrative Penalty Practicing Without a License/Certificate; Guidelines for Negotiating Consent Agreement Pre-Board.

Purpose: The purpose of this Substantive Policy is to establish protocols for efficient and consistent settlement of non-complex, similar complaints, as well as CANDO (Chemically Addicted Nurses Diversion Option) stipulated agreements for eligible Applicants/Respondents, and consent agreements resulting from CANDO discharges, with oversight from Board Members. Efficient Board processing of these cases has an impact on patient safety, as prompt settlement allows the Board to resolve these non-complex cases, begin monitoring applicable Applicants/Respondents earlier, and allocate additional resources to address unprofessional conduct that is more likely put the public at higher risk and harm.

Policy: Board staff continue to take all complaints seriously and investigate allegations according to Board approved guidelines and established policies. The following guidelines have been developed to most efficiently utilize resources in an effort to achieve timely, consistent resolution and closure of non-complex investigative and CANDO cases.

Cases submitted to the Board pursuant to this policy shall meet the following requirements:

- 1) Applicants/Respondents have been informed by Board staff of the option to have their case reviewed by the Board Members and their due process rights to a formal hearing before an Administrative Law Judge.
- 2) Board staff has completed the investigation and Applicants/Respondents have signed a negotiated settlement, either a Stipulated Agreement (CANDO) or a Consent Agreement, in advance of the Board Meeting at which the Board would review their case.
- 3) The Complainant, if any, does not wish to address the Board;
- 4) The negotiated settlement is consistent with prior agreements approved by the Board.

The following are examples of cases that may be closed by the Executive Director or Designee after a negotiated settlement has been signed by Respondent/Applicant:

1) Practicing Without A License/Certificate

- a. Board staff substantiates that an Applicant has practiced nursing before receiving licensure/certificate, and Applicant signs a Consent Agreement for an Administrative Penalty. Upon acceptance of the Consent Agreement and payment of the Administrative Penalty, the Applicant may be issued a license/certificate.
- b. Board staff substantiates that a Respondent has practiced on a lapsed license/certificate and Respondent signs a Consent Agreement for an Administrative Penalty.

2) One Time Alleged Unprofessional Conduct Not Involving Patient Harm

Board staff substantiates any of the following categories of alleged unprofessional conduct, and Respondent/Applicant signs a Consent Agreement for Civil Penalty/Decree of Censure:

- a. Falsification of patient care or incomplete/inaccurate documentation of patient care, if the conduct does not involve patient harm or a pattern of harm or deception
- b. Falsification of employment application(s)

- c. Administration of medication/supplies to a co-worker without a physician order; if the conduct does not involve either patient harm or a pattern of unprofessional conduct.
- d. Theft from an employer that does not involve patient harm or a pattern of unprofessional conduct.
- e. Failure to maintain patient confidentiality that does not involve patient harm or a pattern of unprofessional conduct.

3) CANDO Eligible Applicants and Respondents

- a. Applicants seeking licensure who meet eligibility criteria to participate in CANDO, agree to participate in CANDO, and sign a Stipulated Agreement for CANDO, may be issued a license.
- b. Respondents who meet CANDO eligibility criteria and during a complaint investigation request and agree to participate in CANDO, and sign a Stipulated Agreement for CANDO, may participate in CANDO in lieu of possible disciplinary action.

4) CANDO Discharges - New Disciplinary Consent Agreement

For CANDO discharges in which a former CANDO participant has failed to comply with the CANDO Stipulated Agreement, the noncompliance is directly related to participant's substance use disorder and there is no known patient harm or other practice-related complaints or alleged deficits, the former CANDO participant may sign a disciplinary Consent Agreement that contains terms and conditions consistent with prior Board decisions related to CANDO discharges and consistent with the Board-approved June 2010 Alcohol And/or Drugs Investigative And Disciplinary Guidelines

5) Monitoring Cases: Modifications to Terms/Conditions

- a. Existing Consent Agreements/Orders: Respondents are already being monitored pursuant to a Board-approved Consent Agreement or Order, Respondents are in substantial compliance with the Consent Agreement or Order, and Respondents have requested modification(s) to the original terms and conditions of the Consent Agreement or Order, and sign an amendment consistent with prior Board decisions and actions.
- b. Board-offered Agreements: Respondents were previously offered, but did not yet accept, a Consent Agreement by the Board, and after the Board meeting requested modification to practice-related terms only, The Board-approved terms related to remediation, including treatment, counseling, education requirements, and the length of the agreement remain unchanged, but practice-related terms are modified from the original offer. Examples of practice-related terms include: modifications of practice settings, practice hours, supervision requirements, and out of state practice restrictions, and similar modifications.

6) Respondent Complies with Interim Order and Signs Consent Agreement after Issuance of Notice of Charges

Respondents were issued Notice of Charges in part due to their failure to comply with an Interim Order to obtain an evaluation, but before an administrative hearing, Respondents obtain the evaluation and sign a Consent Agreement consistent with the evaluator's treatment and/or other remediation recommendations, and the Consent Agreement includes the Board's standard terms and conditions.

7) Decree of Censure and Civil Penalty

Cases in which the Board has previously reviewed the investigative findings and determined:

- a. Decree of Censure is appropriate and the Respondent/Applicant requests and signs a Consent Agreement for Civil Penalty.
- b. Civil Penalty is appropriate and the Respondent/Applicant requests and signs a Consent Agreement for Decree of Censure.

Once the negotiated settlements described, above, are approved by the Executive Director or Designee, these cases will be closed and Board staff will provide written notification to the Respondent/Applicant. At the next regularly scheduled Board meeting, Board staff will provide the Board, for information purposes, with summaries related to all cases closed pursuant to this policy, specifically:

A list of case numbers, names, license and/or certificate numbers, and information including settlement terms. For active CANDO participants, only the case numbers and summary with settlement terms will be provided, consistent with CANDO confidentiality terms, unless Board members request additional details.

The Board may review/audit the investigative file of any licensee, certificate holder or applicant whose case has been closed pursuant to this policy.