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65-1120. Grounds for refusal to issue, renew, reinstate, condition, limit, suspend or revoke a license disciplinary actions; civil fines; proceedings; witnesses; costs; professional incompetency defined; criminal justice record information; deferred discipline; conviction defined.

- (a) Grounds for disciplinary administrative actions. The board may deny, refuse to issue, renew, or reinstate, condition, revoke, limit or suspend any license or authorization to practice nursing as a registered professional nurse, as a licensed practical nurse, as an advanced practice registered nurse or as a registered nurse anesthetist that is issued by the board or applied for under this act or may publicly or privately censure a licensee or holder of a temporary permit or authorization, if the applicant, licensee or holder of a temporary permit or authorization is found after the opportunity for a hearing:
- (1) ~~To be guilty of~~ have committed fraud or deceit or made a misrepresentation in practicing nursing or in procuring or attempting to procure a license to practice nursing;
 - (2) ~~to have been guilty of a felony or to have been convicted of:~~
 - (a) any felony offense and has not demonstrated to the board's satisfaction that such person has been sufficiently rehabilitated, except that notwithstanding K.S.A. 74-120, and amendments thereto, no license or authorization to practice nursing as a licensed professional nurse, as a licensed practical nurse, as an advanced practice registered nurse or a registered nurse anesthetist shall be granted to a person with a felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 and amendments thereto or a similar crime in another jurisdiction
 - (b) a misdemeanor offense involving alcohol or drugs and has not demonstrated to the board's satisfaction that such person has been sufficiently rehabilitated;
 - (c) any misdemeanor offense involving a crime against persons, theft, or dishonesty and has not demonstrated to the board's satisfaction that such person has been sufficiently rehabilitated
 - (d) ~~a misdemeanor classified as a guilty of a misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust, except that notwithstanding K.S.A. 74-1120, and amendments thereto, no license or authorization to practice nursing as a licensed professional nurse, as a licensed practical nurse, as an advanced practice registered nurse or registered nurse anesthetist shall be granted to a person with a felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or article 54 chapter 21 of the Kansas Statutes annotated, or K.S.A. 2014 Supp. 21-6104, 21-6325, 21-6326 or 21-6418, and amendments thereto;~~
 - (3) to have committed an act of professional incompetency as defined in subsection (e);
 - (4) to be unable to practice with skill and safety due to ~~current abuse of drugs or alcohol~~ illness, or cognitive decline of mental condition, or loss of motor skills due to physical condition, or impairment including deterioration through aging process, loss of motor skills or abuse use of alcohol or drugs whether prescribed or not; or alcohol;
 - (5) ~~to be a person who has~~ have been adjudged in need of a guardian or conservator, or both, under the act for obtaining a guardian or conservator, or both, and who has not been restored to capacity under that act;
 - (6) ~~to be guilty of~~ have committed unprofessional conduct as defined by rules and regulations of the board;
 - (7) to have willfully or repeatedly violated the any provisions of the Kansas nurse practice act or any rules and regulations adopted pursuant to that act, including K.S.A. 65-1114 and 65-1122 and amendments thereto;
 - (8) to have any professional or occupational registration, license or certification a license to practice nursing as a registered nurse or as a practical nurse denied, revoked, conditioned, limited or suspended, or to be publicly or privately censured, by a licensing authority the board or a licensing authority of any state, of, an agency of the United States government, a territory of the United States or a country or to have other disciplinary action taken against the applicant or licensee by the board of another any state, an agency of the United States government, a territory of the United States or a country. A certified copy of the record or order of public or private censure, denial, suspension, condition, limitation, revocation or other disciplinary action of the licensing authority of another any state, agency of the United States government, territory of the United States or country shall constitute prima facie evidence of such a fact for purposes of this paragraph (8); or
 - (9) to have assisted suicide in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2012 Supp. 21-5407, and amendments thereto, as established by any of the following:
 - (A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406, prior to its repeal or K.S.A. 2012 Supp. 21-5407, and amendments thereto.
 - (B) A copy of the record of a judgment of contempt of court for violating an injunction issued under K.S.A. 2012 Supp. 60-4404, and amendments thereto.

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(C) A copy of the record of a judgment assessing damages under K.S.A. 2012 Supp. 60-4405, and amendments thereto.

(10) to have practiced while the license was ~~invalidated~~ lapsed or inactive pursuant to K.S.A. 65-1117 and 65-1133 and amendments thereto;

(11) to have cheated on an examination administered under this act for licensure;

(12) to have failed to comply with any order of the board;

(13) has violated a provision of the Kansas nurse practice act or one or more of the rules and regulations of the board.

(14) to have abandoned a patient

(15) to have exceeded the terms of the collaborative agreement with a physician, or

(16) to fail to successfully complete the impaired provider program as set forth in K.S.A. 65-11XX and amendments thereto, or the alternative program as set forth in K.S.A. 65-11XX and amendments thereto.

(b) Civil fine. In addition to or in lieu of any other penalty prescribed in subsection (a) the board may assess a civil fine in an amount not to exceed \$2,000 for the first violation, \$3,000 for the second violation and \$5,000 for the third violation and for each subsequent violation. All fines assessed and collected under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

~~(c) Proceedings. Upon filing of a sworn complaint with the board charging a person with having been guilty of any of the unlawful practices specified in subsection (a), two or more members of the board shall investigate the charges, or the board may designate and authorize an employee or employees of the board to conduct such investigation. After investigation, the board may institute charges. If an investigation, in the opinion of the board, reveals reasonable grounds for believing the applicant or licensee is guilty of the charges, the board shall fix a time and place for proceedings, which shall be conducted in accordance with the provisions of the Kansas administrative procedure act.~~

~~(d)(c) Witnesses. No person shall be excused from testifying in any proceedings before the board under this act or in any civil proceedings under this act before a court of competent jurisdiction on the ground that such testimony may incriminate the person testifying, but such testimony shall not be used against the person for the prosecution of any crime under the laws of this state except the crime of perjury as defined in K.S.A. 2012 Supp. 21-5903, and amendments thereto.~~

~~(e)(d) Costs. If final agency action of the board in a proceeding under this section is adverse to the applicant or licensee, the costs of the board's proceedings shall be charged to the applicant or licensee as in ordinary civil actions in the district court, but if the board is the unsuccessful party, the costs shall be paid by the board. Witness fees and costs may be taxed by the board according to the statutes relating to procedure in the district court. All costs accrued by the board, when it is the successful party, and which the attorney general certifies cannot be collected from the applicant or licensee shall be paid from the board of nursing fee fund. All moneys collected following board proceedings shall be credited in full to the board of nursing fee fund.~~

~~(f)(e) Professional incompetency defined. As used in this section, "professional incompetency" means:~~

- ~~(1) One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the board;~~
- ~~(2) repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the board; or~~
- ~~(3) a pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to practice nursing.~~

~~(g)(f) Criminal justice information. The board upon request shall receive from the Kansas bureau of investigation such criminal history record information relating to arrests and criminal convictions as necessary for the purpose of determining initial and continuing qualifications of licensees of and applicants for licensure by the board.~~

(g) Deferred discipline. The board may defer discipline in a diversion agreement or other action against any impaired licensee who enters into a binding agreement, in a form satisfactory to the board, under terms of which such licensee agrees not to practice nursing or to practice nursing with limitations or conditions and to enter into, and comply with the requirements of, a board-approved treatment and/or monitoring program in accordance with K.S.A. 65-xxxx, and amendments thereto, or regulations adopted by the board under this act; provided that this subsection shall not apply to any licensee who has been convicted of, pleads guilty to, or enters a plea of *nolo contendere* to a felony offense involving a controlled substance. If a licensee fails to comply with the board-approved program, the board may then give the licensee notice of its intent to lift the stay or deferment and impose discipline or other action.

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(h) Conviction defined. As used in this section, a conviction includes a finding of guilty by a military court martial pursuant to the uniform code of military justice, by a court of the United States or by a court of competent jurisdiction in any state; or any diversion, agreed disposition, or deferred judgment agreement entered into in a felony or misdemeanor case.

History: (L. 1949, ch. 331, § 9; L. 1963, ch. 314, § 6; L. 1972, ch. 231, § 10; L. 1975, ch. 316, § 7; L. 1978, ch. 240, § 6; L. 1981, ch. 245, § 1; L. 1983, ch. 206, § 10; L. 1985, ch. 88, § 6; L. 1986 ch, 233, § 4; L. 1990, ch. 221, § 5; L. 1993, ch. 194, § 1, L. 1995, ch. 97, § 2, L. 1997, ch. 158, § 4; L. 1998, ch. 142 § 8; L. 2011, ch. 114 § 42; Jan. 1, 2012.)