

Part 4 License Denial and Discipline

58-31b-401 Grounds for denial of licensure or certification and disciplinary proceedings.

- (1) Grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in accordance with Section 58-1-401.
- (2) If a court of competent jurisdiction determines a nurse is incapacitated as defined in Section 75-1-201 or that the nurse has a mental illness, as defined in Section 62A-15-602, and unable to safely engage in the practice of nursing, the director shall immediately suspend the license of the nurse upon the entry of the judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending. The director shall promptly notify the nurse in writing of the suspension.
- (3)
 - (a) If the division and the majority of the board find reasonable cause to believe a nurse who is not determined judicially to be an incapacitated person or to have a mental illness, is incapable of practicing nursing with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the nurse with a notice of hearing on the sole issue of the capacity of the nurse to competently, safely engage in the practice of nursing.
 - (b) The hearing shall be conducted under Section 58-1-109 and Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).
- (4)
 - (a) Every nurse who accepts the privilege of being licensed under this chapter gives consent to:
 - (i) submitting to an immediate mental or physical examination, at the nurse's expense and by a division-approved practitioner selected by the nurse when directed in writing by the division and a majority of the board to do so; and
 - (ii) the admissibility of the reports of the examining practitioner's testimony or examination, and waives all objections on the ground the reports constitute a privileged communication.
 - (b) The examination may be ordered by the division, with the consent of a majority of the board, only upon a finding of reasonable cause to believe:
 - (i) the nurse has a mental illness, is incapacitated, or otherwise unable to practice nursing with reasonable skill and safety; and
 - (ii) immediate action by the division and the board is necessary to prevent harm to the nurse's patients or the general public.
 - (c)
 - (i) Failure of a nurse to submit to the examination ordered under this section is a ground for the division's immediate suspension of the nurse's license by written order of the director.
 - (ii) The division may enter the order of suspension without further compliance with Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to submit to the examination ordered under this section was due to circumstances beyond the control of the nurse and was not related directly to the illness or incapacity of the nurse.
- (5)

- (a) A nurse whose license is suspended under Subsection (2), (3), or (4)(c) has the right to a hearing to appeal the suspension within 10 days after the license is suspended.
- (b) The hearing held under this Subsection (5) shall be conducted in accordance with Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the continuance of the order of suspension in order to prevent harm to the nurse's patients or the general public.
- (6) A nurse whose license is revoked, suspended, or in any way restricted under this section may request the division and the board to consider, at reasonable intervals, evidence presented by the nurse, under procedures established by division rule, regarding any change in the nurse's condition, to determine whether:
 - (a) the nurse is or is not able to safely and competently engage in the practice of nursing; and
 - (b) the nurse is qualified to have the nurse's license to practice under this chapter restored completely or in part.
- (7) Nothing in Section 63G-2-206 may be construed as limiting the authority of the division to report current significant investigative information to the coordinated licensure information system for transmission to party states as required of the division by Article VII of the Nurse Licensure Compact in Section 58-31c-102.
- (8) For purposes of this section:
 - (a) "licensed" or "license" includes "certified" or "certification" under this chapter; and
 - (b) any terms or conditions applied to the word "nurse" in this section also apply to a medication aide certified.

Amended by Chapter 364, 2013 General Session