Nurse Practitioner Board Complaint Case Study: Failing to Maintain Professional Standards as it Relates to Improper Conduct Connected to Social Media Activity

Nurse Practitioner Licensure Defense Expenses Case Study with Risk Management Strategies

Presented by CNA and NSO



A State Board of Nursing (SBON) complaint may be filed against a Nurse Practitioner (NP) by a patient, a patient's family member, colleague, employer, and/or other regulatory agency, such as the Department of Health. Complaints are subsequently investigated by the SBON to ensure that licensed nursing professionals are practicing safely, professionally, and ethically. SBON investigations may lead to outcomes ranging from no action against the NP to revocation of the NP's license to practice. Therefore, when a complaint is asserted against a NP to the SBON, the NP must be equipped with the resources to adequately defend the matter. Being unprepared may represent the difference between a NP retaining or losing their license. This case study involves a registered NP who had been a NP for over 20 years and was currently working in an outpatient clinic setting.

Background

The NP was contacted by an SBON investigator informing him that a complaint had been filed against him. The subject of the complaint was posts and re-posts on the NP's personal social media account regarding multiple political matters. The investigator confirmed that the complaint alleged improper conduct connected to social media activity rather than patient care, clinical practice, substance use, fraud, or criminal activity.

The investigator informed the NP that he would soon receive a formalized SBON notice detailing the complaint information as well as a date for the hearing.

A few days later, the NP received the documents from the SBON. The NP notified the insurance carrier who retained the assistance of an attorney experienced in defending complaints filed with the licensing board. The NP provided the attorney with the documents he received from the SBON. The attorney reached out to the SBON investigator on behalf of the NP. Both agreed to delay the formal hearing so that the attorney could review the allegations of the complaint and provide a response to the SBON on the NP's behalf.

The attorney noted that the NP established his social media account approximately eight years prior to the complaint as well as the following:

- The account was made using a nickname that his friends and family knew him by and not the formal name he used in practice.
- His profession as an NP was not identified.
- No patients or patients' information was ever mentioned.
- No patients were tagged in any of his posts.
- All postings occurred outside any professional setting.

While reviewing the specific information on the NP's social media account, the attorney noted that there were only five instances in which the NP reposted news articles and images that were already available online and minimal original commentary.

During the timeframe in which the attorney was reviewing the complaint and information on the NP's social media account, the NP experienced targeted attacks both personally and financially. The individuals opposed to the social media content contacted the NP's employer, licensing authorities, and others. The NP deleted all posts referenced in the complaint, and, when his employer continued to receive complaints, he deleted his social media account. Despite creating a new account using an alias and avoiding any political comments, the NP and his employer continued to receive

complaints.

In the attorney's response to the SBON, she described the organized online effort targeting people who publicly expressed support for political matters. She claimed that the NP's employer had difficulty including his information on its website because renewed complaints or communications would occur after publication. In her letter to the SBON, the attorney argued that the investigation against the NP should be dismissed. The attorney stated:

- The SBON lacked authority to regulate or discipline a licensee for personal political activity unrelated to professional practice and that continuing the investigation would extend beyond the SBON's intended regulatory authority.
- The conduct involved protected personal expression and did not contain any information regarding the NP's profession, patients, his employer, or the name he used professionally.
- Because the content was shared privately and outside the professional context, constitutional analysis further supported dismissal of the case.

SBON's Response and Resolution

The SBON responded that they had closed their investigation but noted that confidentiality laws prevented disclosure of the exact reason for closure. The response letter explained that routinely cases are closed for a variety of reasons, which may include:

- Insufficient evidence.
- Allegations that do not constitute a violation even if true.
- Unfounded allegations.
- Expiration of the statute of limitations.
- A non-public action by the SBON.

Importantly, the closure letter did not specify which of these reasons applied in this case. It simply confirmed that the investigation was closed and that the file remained confidential. The SBON also stated that if additional information was received, they could reopen their investigation into the NP.

This case exemplifies the importance of notifying your insurance carrier and retaining an attorney familiar with professional licensing board matters, as the outcome may have been different with a less experienced attorney or if the NP had tried to communicate a resolution with the board on his own. While the SBON matter resolved positively for the NP, he suffered both personally and professionally. The expenses incurred to defend the insured in this matter exceeded $4,000.

This matter demonstrates how personal social media activity can trigger licensing complaints even when the conduct is not directly tied to patient care, and how licensure defense expenses coverage may be used to obtain legal representation during a board investigation.

Risk Management Recommendations

Below are risk recommendations that may help mitigate a licensing board investigation being conducted against an individual based on their personal social media presence.

Practical risk management recommendations include a simple test prior to posting on social media – "Would I be comfortable seeing this post displayed on a licensing board complaint, malpractice case exhibit, employer HR file, or newspaper front page"? If the answer is no—or even maybe—don't post it.

- **Never post any information that could identify a patient.** The single greatest social media risk is disclosure of protected health information (PHI). Even a de-identified story may violate privacy requirements if enough details exist for someone to identify the patient. Examples that could identify a patient include:
  - Patient photographs or videos
  - Names, initials, room numbers, or dates
  - Clinical details that could identify a patient
  - Stories that allow others to recognize a patient, even if the name is omitted
  - Screenshots from electronic medical records
  - Images that inadvertently include patient information in the background
- **Assume everything you post is public and permanent.**
- **Separate personal opinions from professional identity.** This matter illustrates how personal posts can still generate licensing board complaints even when they are unrelated to patient care. Consider:
  - Whether your profile identifies you as a NP, physician, therapist, pharmacist, or other healthcare professional.
  - Whether your employer can be identified.
  - Whether controversial content could be perceived as unprofessional conduct.
- **Verify health information before sharing.** Healthcare professionals may face criticism, complaints, or liability if they share inaccurate healthcare information. Before posting:
  - Verify information from reputable scientific sources.
  - Avoid spreading unverified claims.
  - Distinguish facts from personal opinion.
  - Consider whether a reasonable patient might rely on the information.
- **Understand employer and SBON policies.** Healthcare professionals should know:
  - Employer social media policies
  - HIPAA requirements

- SBON regulations
- Professional association ethical standards
- Many SBON consider online conduct when evaluating allegations of:
  - Unprofessional conduct
  - Boundary violations
  - Harassment or discrimination
  - Patient confidentiality breaches

- **Never post while performing patient care.** Social media activity during patient care can become problematic in malpractice litigation.
- **Review online privacy settings regularly.** Privacy settings reduce risk but do not eliminate it. At a minimum:
  - Restrict public access where appropriate.
  - Review tagged photos.
  - Limit who can view personal information.
  - Be cautious about location-sharing and geotagging.
- **Seek early assistance if a complaint is filed.** Immediately contact your carrier if contacted by:
  - A licensing board
  - An employer investigator
  - A professional association
  - A plaintiff attorney ■

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