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# INVESTIGATION EBOOK

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For a nurse, finding out that you are under investigation by the BRN or BVNPT is a terrifying experience. Your RN or LVN license is what enables you to work, but for nurses, being an RN or LVN is so much more than that! Being a nurse is not just a career, it is who you are and what defines you. Having your license jeopardized in any way can have truly life altering consequences for you as a nurse.



## WHAT TRIGGERS A BRN or BVNPT INVESTIGATION?

The only thing that will ever cause you to be under investigation by the BRN is having a complaint filed against your RN or LVN license. This happens for a number of reasons:

1. **Your employer files a complaint.** These occur most frequently as a result of being disciplined or terminated by your employer for charting errors, medication discrepancies or suspicion of diversion of medication. Your employer will also file a complaint for patient care issues or violating company protocol or procedures.
2. **A co-worker or colleague files a complaint.** Sometimes a co-worker may report you to the BRN. Typically, these complaints occur for the same reasons that an employer would file a complaint, but we have seen co-worker complaints if the colleague suspects you of being at work impaired or for having mental health issues that are keeping you from practicing safely. Occasionally, a co-worker may file a complaint to be malicious or to try to get you fired.
3. **A vindictive ex-spouse or partner or family member complains.** A few times a year, I receive calls from nurses who have had a complaint reported to the BRN by an ex who is trying to ruin their lives. I've seen it during divorces as a weapon in custody battles. I've seen it following a divorce as just pure malicious meanness. Usually, these complaints have little or no merit, but that doesn't mean the BRN won't investigate.
4. **A patient or patient's family member files a complaint.** Patients or their families will make a complaint for any number of reasons, sometimes as a precursor to a malpractice claim, sometimes because they are upset about the level of care they received from the hospital and you get blamed because you are the person they saw the most of.
5. **A criminal conviction or arrest.** When you are arrested, you are typically fingerprinted and because you are a nurse, you have been Live Scan fingerprinted. This means that when you are fingerprinted at the arrest, the arresting agency notifies the Department of Justice (DOJ) and the DOJ immediately notifies the BRN.

## HOW DO I KNOW IF I AM UNDER INVESTIGATION BY THE BRN or BVNPT?

An agent of the Department of Consumer Affairs will call, email, send a letter or show up on your doorstep.

Once the BRN or BVNPT receives a complaint, they must investigate it. Every single complaint made to the Board will be reviewed. A complaint involving drugs or alcohol or mental health will be referred to the Diversion or Intervention program first. The Diversion program moves quickly and they will contact you within a few weeks of the arrest or complaint and offer you the option to enroll in the program. They may contact you by phone, letter or even email. Please read more on [The Diversion Program](#) or on our [blog](#) if you've received the Intervention Letter. If you decline the Diversion program, your case will be assigned to an investigator.



Every single complaint to the BRN or BVNPT will be investigated. Once the Board receives the complaint it will be assigned to a specific investigator. The Investigator will get to it about 4-6 months after receiving the complaint, because they have 100 other cases before yours. The BRN or BVNPT investigator may review and quickly dismiss the complaint, if they can determine it is meritless on its face and you may never even know you were ever under investigation at all. More likely, the investigator will review the complaint and want to speak to you regarding it.

They will contact you via letter or phone and ask you to meet in person for an interview and to sign a release for authorization of your records. It is possible, in some instances, the investigator may show up unannounced at your home.

The letter or email will say something along the lines of "I am an investigator with the Department of Consumer Affairs, agent for the Board of Nursing. We have received a complaint that on or about \_\_/\_\_/\_\_ while employed by Hospital Z, you violated the Nurse Practice Act by failing to properly chart/ waste/ document/ provide care of/ etc. I would like to schedule a time to meet with you to discuss this matter. Please sign this Authorization for Release of Records and submit it along with your resume to me within 15 days. Love, Officer John"

In most cases you will know exactly what incident is being investigated, but occasionally a nurse may not know and would like some additional information. But here's the thing, the investigator will not provide any real details beyond the vague statement they've already provided. Because it is the Board's investigation, they do not have to provide you with any details. You will not have access to any of the charts or evidence they may have against you until you are sitting across the table from them during the interview. You will never know exactly who filed the complaint.

If the investigation has progressed to the point that the BRN is contacting you, that means they have already reviewed your complaint, looked into the allegations, reviewed some evidence and determined that you may be in violation of the Nurse Practice Act.



## WHO ELSE WILL KNOW I AM UNDER INVESTIGATION?

The investigation process is somewhat confidential, meaning there is nothing posted publicly on BREEZE or attached to your license. If you were terminated from your prior job (the one who probably filed the complaint) and are employed somewhere else, it's rare that your new employer will be questioned, but it certainly can happen. This is one of the reasons it is so critical to not sign the Authorization for Release of Records without first consulting with an attorney.

## WHO ARE BRN/ BVNPT INVESTIGATORS?

The BRN and BVNPT employs investigators with the Department of Consumer Affairs. Many of them are former law enforcement officers. Many of them have weapons permits and are allowed to carry a firearm. Many of them refer to themselves as "Officer." Most of them will first send you a letter, letting you know that you are under suspicion for violating the Nurse Practice Act in some manner and they are conducting an investigation. They will include a very broad "Authorization for Release of Records" that they will want you to sign and they will want to schedule an interview to meet with you in person. A number of them will call you and try to get you to agree to an interview on the phone. A very special few just show up on your front steps, totally out of the blue.

## HOW TO HANDLE BRN/BVNPT INVESTIGATORS

The letter is easy to deal with. Most people will head straight to Google and will hopefully find me, who will tell you emphatically, “DO NOT SIGN ANYTHING OR SAY ANYTHING WITHOUT REPRESENTATION!” The phone call is a bit more surprising, so you may have agreed to a meeting before you get your wits about you and have a moment to process... then you Google and find me, who says “that’s ok, we can reschedule and we will be there with you!” It is the bombardment of the sneak attack that throws nurses for a loop when they open their front door and there is an officer on their front steps with what looks like a gun under their blazer and a cup for a urine sample in their hand.

### You have rights. It is imperative that you know this.

1. **You have the right** to decline an interview without representation.
2. **You have the right** to decline to sign the release for authorization of records.
3. **You have the right** to decline to give any statement or any audience to the investigator, but must supply “Good Cause” for the declination.
4. **You have the right** to decline a urine sample.
5. **You have the right** to open the door, have the investigator introduce themselves and then promptly shut it. I cannot more strongly encourage you to invoke any and all of these rights, in lieu of just having a nice chat with the Board’s investigator.
6. Remember, **you do not have the right** to obtain details or evidence against you, prior to the interview itself.

Once you have given a statement of any kind, it is admissible and it will be used against you. BRN and BVNPT investigators do not read you Miranda Rights or notify you of your rights, you are supposed to know that you don’t have to talk to them. You will never be able to use “the BRN investigator didn’t tell me my rights” as a defense.

Once you have signed the Authorization for Release of Records, the BRN can get into any record they want. ANY RECORD!!!! You are signing a blanket release for them to open your second-grade discipline file, to your entire employment history, all the way to your medical records. PLEASE do not sign this unless advised to do so by an attorney. You will probably not be able to rescind an Authorization for Release, once signed.

Once you have voluntarily submitted to a urine sample, the BRN can use any toxicology results against you. The Investigator showed up at 7:30 pm on a Saturday to ask you about a patient care issue and you had a glass of wine? They can infer you are an alcoholic. The investigator is there to look into a series of improperly wasted medication? Your prescription Ambien, Zanax or pain meds show up in your urine, you could be abusing or dependent on your medication and diverting from your employer.

Does this sound crazy to you? It does to me, too. But, I am telling you, I have seen thousands of cases, and some crazy Accusations have been filed against nurses for what appears to be a string of loosely slapped together circumstantial evidence obtained by the BRN investigator.

## WHAT SHOULD I DO IF I AM UNDER INVESTIGATED BY THE BRN?

If you have received a phone call or a letter notifying you that you are under investigation, the absolute worst thing you can possibly do is begin talking to the investigator. The second, or equally damaging thing you can do, is sign the authorization for release of records. It is critical that you understand that your RN license is on the line. There has been a complaint filed against you alleging a violation of the nurse practice act (NPA) and the BRN or BVNPT has already decided that you may be guilty of the complaint. At this point, you know very little to nothing about the complaint itself. The investigator knows all of the details. They have all the charts, all the files, the police report, the arrest report, the statement from co-workers, the affidavit from the hospital... and they have you on the line. **THE ONLY REASON THEY ARE CONTACTING YOU IS TO GET YOU TO ADMIT TO MAKING A MISTAKE!** They may sound like the nicest person on the planet and will lead you to believe that they are trying to help you. The investigator works for the BRN and it is their job to find you guilty of a mistake. They are NOT there to help you at all. Please do not do their job for them by admitting to anything or signing anything.

If you discover you are being investigated by the BRN or BVNPT, you need to know what your rights are. You need to find out what the complaint entails. You need to determine if it is in your best interest to meet with the investigator or decline the interview \* (as of April, 2017 this is no longer an option). You need to know if the allegation could land you in trouble criminally. You need to know what "records" you are agreeing to have released. If you value your RN license and your career and those two letters after your name, you very likely need an attorney at this stage.

## CAN'T I JUST IGNORE THE BRN INVESTIGATION?

In a few cases, you can! If the complaint is stemming from an arrest and you get contacted by an investigator, that investigator is jumping the gun. The BRN or BVNPT cannot discipline your license unless they have some sort of proof that you violated the NPA and in the situation of an arrest, they should allow the criminal process to run its course before they contact you. Remember that little phrase "innocent until proven guilty?" Right! Until you are convicted of a crime, you are still innocent and the BRN or BVNPT will not move to discipline you... unless of course you decide to spill the beans that you had been drinking, that you did get in argument with your spouse, that you did drive on your prescription meds, etc. Until the criminal process is finalized, the only person who can close the BRN or BVNPT investigation is YOU- by admitting guilt to an investigator... who is trying to get you to do exactly that.

In most cases, you cannot ignore an investigation. Even in the arrest case I just mentioned, you still must acknowledge the investigator and provide a reason why you are declining to give a statement. In fact, failure to comply with a BRN or BVNPT investigation is considered Unprofessional Conduct, and you guessed it, that all by itself is a violation of the NPA and cause for disciplinary action against your license.

Let's get really real for a minute. Let's say you know flat out that you diverted, or made a number of charting errors, or deviated from the standard of care. Let's say you unequivocally know you blew it and you know that you do not want to meet with the investigator or sign anything. Even then, you cannot decline participation in the interview without Good Cause. Good Cause is a legal term of art, it does not mean, as most people believe, "a good reason." You need an attorney to provide Good Cause why you are declining the interview, and you can't

very well provide your own, now can you? You can't say "I decline to participate in the interview because I will incriminate myself by doing so."

## WHAT HAPPENS DURING THE PHONE CALL AND INVESTIGATION INTERVIEW?



### THE INITIAL PHONE CALL

The initial conversation with the investigator will go something like this:

**Investigator:** "This is John. I have this complaint that I have to look into... I'm sure it's nothing but I need to ask you a few questions about it."

**You:** "oh, sure John, no problem. Anything I can do to help. What is this about anyway?"

**Investigator:** "It's just some silly complaint about a few medication wasting or charting errors... can we meet so you can explain them?"

**You:** "Sure. Although, I don't know what you're talking about... I can't think of any errors or issues... unless it was that one time.... Hmm. I do remember a few months ago I was tired and may have made a mistake... is that what this is about?"

**Investigator:** He is writing down that you've just admitted to making a mistake that will go in his report and all by itself is cause for disciplinary action against your RN or LVN License. "It's just a few little issues that I need you to explain and then I'm sure this will just go away."

**You:** "Great. When do you want to meet?"

**Investigator:** He is ecstatic that you've agreed and doesn't want you to have time to realize that you should have representation. "As soon as possible. I just want to wrap this up... I'm sure it's nothing. How is tomorrow?"

**You:** "That's fine. See you then." You feel relieved. This isn't a big deal and John seems so nice, he just wants to help.

**Investigator:** Doing fist pumps as he gets off the phone because he knows he's got you.

The investigator is not there to help you, despite how nice they sound on the phone. They are employed by DCA and the Boards. Their job is to work for DCA which means they are investigating to find cause for action for the BRN or the BVNPT.

**The Investigators are working against you. It is imperative that you know that.**



## THE INTERVIEW

You show up to meet with John at some government office building or he may even come to you and meet you at home or at work. He is sitting at a table piled with paper, and hang on a second... is John wearing a gun and a badge? The piles of paper are charts and they are riddled with errors that you cannot explain. John will ask you about every mistake, every error. If you admit to any mis-charting, any wasting errors, any meds given on expired orders, any mistake at all... John has all he needs. And, he won't just ask you once. He will ask you the same question 10 different ways until you give him the answer he wants. At some point he asks you to take a drug test and tells you there is an officer who is going to accompany you to the bathroom and will watch you pee in a cup. You do... but you forget about your spouse's Ambien you took to go to sleep last night because you were so worried about your meeting with John. You leave 4 hours later feeling like you just made a big mistake and thinking John wasn't so nice after all.



## CONCLUDING THE REPORT, BRN ENFORCEMENT and FELONY CHARGES

What you unwittingly did in the interview was to give the Enforcement Division everything they need to file an Accusation against your Registered or Licensed Vocational Nursing License charging you with Incompetence and Gross Negligence, both of which are cause for revocation or suspension of your RN or LVN license. You also are going to have a non-prescribed substance show up in your urine and the Board will assume you are a drug seeker and that all those missing meds that couldn't be accounted for were diverted by you, so they will accuse you of diversion. This same report will get forwarded to your local District Attorney who will do their own criminal investigation and could potentially charge you with a felony.



### THE REALITY CHECK

C'mon... does this really happen? Is this just a scare tactic to get you to call us so we can talk you into retaining our attorneys? Yes. And, in an effort at full disclosure, yes. Virtually every Accusation pertaining to medication charting or wasting errors is the result of an RN or LVN meeting with an investigator without a lawyer present. The BRN needs you to wrap up their case for them. They need you to admit to making a mistake and if they can pin diversion on you, they will in a heartbeat. Your only chance at protecting yourself at the investigation stage, is to hire an attorney who knows what they are doing and knows how to prepare you and protect you. And, if an Accusation is filed anyway, at least you have set yourself up with best chance of defending yourself against it. We've never lost an RN license on an Accusation when we handled the investigation as well.

In conclusion, I will give you some free advice. **It is about a million times better to ignore the investigator and not participate in the interview than it is for you to go in unrepresented and unprepared**, even if this means you will face an unprofessional conduct charge. You will think you have nothing to hide, so what can be the harm? The harm is ALWAYS in saying too much and not being prepared for what will be asked, so in order to keep that from

happening it is better to say nothing. Remember what your mom told you: "... if you don't have something nice to say, don't say anything at all." Your mom may have made a good lawyer.

## WHAT HAPPENS AFTER THE BOARD INVESTIGATION IS OVER?

There are only 3 outcomes following a BRN or BVNPT investigation:

**1. The investigator closes the case without merit.**

This means that the investigator has looked into the complaint, talked to witnesses, looked over charts, met with you and determined there is nothing there. There is no violation of the NPA at all. The case is closed. Here's the clincher though... and this is so frustrating... they usually DON'T TELL YOU THE CASE IS DROPPED! That's right, you get to stay in a stressful limbo for the next year or so, checking your mail like a crazy person for a letter that will never come. Know that if you don't hear from the BRN or BVNPT for about 18 months following an investigation, you are probably in the clear.

**2. The complaint has merit and an Accusation is filed against your RN or LVN License.**

Unfortunately, this is the most common result. When the investigation concludes, the case is referred to the BRN's or BVNPT's attorney (The Attorney General of California) to build the case against you. The case that they establish is called an Accusation and it will be served to you, just like any formal court document. The Accusation will establish the proof of the violation of the NPA and will call for revocation or suspension of your RN or LVN license. For more on [Accusations](#), refer to our Blog or Download our Accusation eBook.

**3. The complaint has merit, but is not a gross violation of the NPA.**

If this is the case, the BRN or BVNPT may issue a Citation and Fine in lieu of filing an Accusation. A citation and fine from the Board is like a parking ticket against your RN or LVN license. It is not formal discipline, for RNs, it will not show up attached to your license on the Breeze system and you do not have to report it or disclose it to your employer. In short, it's a great deal if you can get it.

Obviously, your goal in having investigation representation is to avoid having an Accusation filed against your nursing License, because Accusations all by themselves are problematic. They are public record, they never go away, they make finding new employment more difficult, at the very least, they are embarrassing. However, sometimes an Accusation is unavoidable and in these cases, it might be even more important to have proper representation at the investigation stage. The investigation is the only point in the BRN disciplinary process where you have a chance of influencing the final outcome of an Accusation and having an attorney represent you, who has handled hundreds of cases like yours, ensures that the final outcome will be better for you, not worse.



## WHAT CAN YOU DO TO PROTECT YOUR LICENSE?

So now that you know that the most frequent result following an investigation is the filing of an Accusation against your RN License, what can you do to protect yourself?

- 1. Know your rights.**
  - Now you know them.
- 2. Do not ever meet with, sign, or submit to a sample without attorney representation.**
  - Your attorney will give you the best chance of avoiding an Accusation, and if an Accusation is inevitable, your attorney is protecting you from the beginning.

I get it... this is the self-serving part of this article you knew you were going to get to. But, realistically, the only thing you can do is defend yourself and your license and the best way to do that is to be represented by a team of attorneys who know the BRN and BVNPT and their investigators. How else would we know that the BRN is showing up on nurses' doorsteps? It's happening to our clients. How else would I know that the BRN can turn a positive urine sample, given voluntarily, into evidence for an unrelated issue? It has happened to our clients. How else would I know how the calls and interviews with "Officer John" play out? It has happened to hundreds of our clients.

You are at the tipping point right now, where you can either make this much better or much worse for yourself, please allow us to help you tip the scales in your favor and protect your nursing license and your career. Talking to RN Guardian for an initial consult is always free. A Partner will listen to your story and let you know exactly what you can expect in your own unique situation. We will tell you what your rights are moving forward and if you choose to have us help you, one of the most experienced RN License Defense attorneys in the State will be there to guide you through this process and help you keep your RN or LVN License and the career you love so much... the career that defines you. Please call me before you call them.