



INVESTIGATION FIELD GUIDE

For a nurse, finding out that you are under investigation by the BON 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 BON INVESTIGATION?

The only thing that will ever cause you to be under investigation by the BON 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 BON. 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 BON 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 BON 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.** You are required to disclose any criminal arrest, including pending criminal charges, convictions, and deferred adjudications to the BON during the licensure application or renewal process. The BON may also initiate their own background check.

HOW DO I KNOW IF I AM UNDER INVESTIGATION BY THE BON?

An investigator with the Texas Board of Nursing will send a certified letter to the address they have on file for you. The letter will be on BON's letterhead and outline the allegations against you.

Once the BON receives a complaint, it will be reviewed. An initial review is completed to determine jurisdiction and whether the allegations, if true, would constitute a violation of the Nursing Practice Act or other BON rule or regulation. A complaint involving drugs or alcohol or mental health will be referred to the Texas Peer Assistance Program for Nurses (TPAPN) first. The TPAPN program moves quickly and they will contact you by letter within a few weeks of the complaint and offer you the option to enroll in the program. If you decline the TPAPN program, your case will be assigned to an investigator.



The investigator will contact you via letter. The letter will say “This office has received information indicating that you may have violated the Nursing Practice Act and/or the Board’s Rules and Regulations Relating to Nurse Education, Licensure and Practice. We are initiating an investigation and **providing you with an opportunity to be heard and to submit information in writing** about each of the alleged facts or conduct to assist us in making a determination.”

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 know exactly who filed the complaint.

In addition to your written response, the investigator will also advise you to provide documentation regarding mitigating circumstances, other information showing compliance, and your resume. You will be requested to submit all information within thirty (30) days. During an investigation you will also be instructed to notify the Board of any changes of position or employment, any plans to enter or apply to nursing school, and any change in name or address.

The letter will be signed by the investigator and the investigator will provide his or her phone number and email address. They will tell you to contact them if you have any questions.



WHO ELSE WILL KNOW I AM UNDER INVESTIGATION?

The investigation process is somewhat confidential, meaning there is nothing posted publicly 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.

WHO ARE BON INVESTIGATORS?

BON investigators are responsible for examining complaints against nurses to ensure compliance with the Nursing Practice Act and Board regulations. These investigators typically have backgrounds in nursing, law enforcement, or regulatory enforcement, allowing them to assess medical and legal issues. Many investigators are licensed nurses with experience in clinical practice, which helps them understand the standards of care and professional conduct expected in the nursing field. Others may have experience in legal investigations or administrative law. BON investigators conduct interviews, gather evidence such as patients records and witness statements, and work closely with legal staff to determine whether a violation has occurred.

WHAT SHOULD I DO IF I AM UNDER INVESTIGATED BY THE BON?

If you have received a letter notifying you that you are under investigation, the absolute worst thing you can possibly do is begin talking to the investigator. 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 BON 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 will know all of the details. They will 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 LAST THING YOU WANT TO DO IS ADMIT TO MAKING A MISTAKE!** The investigator may sound like the nicest person and you may believe they are trying to help you. However, the investigator works for the BON and it is their job to decide if you are 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.

If you discover you are being investigated by the BON, you need to know what your rights are. You need to find out what the complaint entails. You need to know if the allegation could land you in trouble criminally. 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?

Ignoring an investigation by the BON is not advisable and can have serious consequences. When a nurse is under investigation, the BON sends formal notifications requesting a response and cooperation. Failing to respond or comply with requests for information can be seen as unprofessional conduct and may result in additional disciplinary action, including license suspension or revocation.

Nurses have the right to legal representation and should take the investigation seriously, even if they believe the complaint is unfounded. Responding appropriately allows the nurse to present their side of the story, provide necessary evidence, and possibly resolve the issue without severe penalties. If a nurse refuses to participate, the BON can proceed with the case using available evidence, which may result in a default judgment against the nurse. Therefore, it is always best to engage with the process, seek legal advice, and work towards a resolution.

WHAT HAPPENS DURING THE INVESTIGATION?



COLLECTION OF DOCUMENTS AND WITNESS STATEMENTS

As part of the investigation, the BON investigator will gather documents and talk to people involved. This may include interviewing the person who filed the complaint, coworkers, supervisors, and any witnesses with relevant information. They may be asked to provide a written statement under penalty of perjury. The investigator will also collect and review relevant records such as medical charts, prescription logs, and your employment history. This will include any past disciplinary actions or complaints in your personnel file. You cannot prevent the Board from collecting your personnel file. If there are concerns about drug or alcohol use, they may also look at drug test results. In some cases, investigators conduct on-site inspections of your workplace to verify procedures and patient care practices.

FORENSIC EVALUATIONS WITH A POLYGRAPH TEST

Yes! You read that correctly! The BON can request you participate in a forensic evaluation and a lie detector test as part of their investigation. A forensic evaluation requested by the BON typically occurs when a nurse is under investigation for misconduct, substance abuse, mental health concerns, or criminal behavior that may impact their ability to practice safely.

The evaluation may include an interview with a BON doctor that will assess your mental health and personality traits. If substance use is a concern, you will have to go through drug and alcohol tests with addiction assessments. If cognitive impairment is suspected, your memory and reasoning will be evaluated. The BON doctor will also be provided with your professional file prior to your appointment which could be used against you during the examination. The BON uses these evaluations to determine what action on your license is necessary. You can be required to complete treatment or counseling, your license can be restricted with probation conditions or monitoring, and even worse, your license can be suspended or revoked if you are found unfit to practice.



YOUR RESPONSE TO THE INVESTIGATION

You will have the opportunity to submit a written response to the allegations, which is a crucial step in the investigation process. The BON typically requires this response within thirty (30) days of receiving your initial letter. But how do you write an effective response, especially when you may not even know what information the BON has? This is where many nurses make their biggest mistake. It's important not to admit to any facts before fully understanding the evidence against you. In some cases, the BON may not even have enough information to implicate you, so responding carefully and strategically is essential to protecting your license and career.

Your response should go beyond just a written statement. It must include strong supporting evidence such as workplace policies, emails, and patient records. Witness statements can also be valuable in reinforcing your case. Additionally, it is crucial to present any mitigating factors that highlight your compliance with nursing standards and commitment to proper patient care. Providing a well-documented and thorough response can make a significant difference in the outcome of the investigation.

CONCLUDING THE REPORT, BON ENFORCEMENT and FELONY CHARGES

Speaking to the BON without proper legal guidance can have serious consequences. By unknowingly providing certain statements during your response, you may give the BON exactly what they need to file Formal Charges against your license for Incompetence and Gross Negligence—both of which are grounds for suspension or revocation under Texas law.

Additionally, if your employer made you take a drug test and it came back positive, the BON may assume you are a drug seeker and link you to any missing or unaccounted-for medications. Potentially this would lead to allegations of drug diversion. This can trigger not only disciplinary action by the BON but also a referral to your local District Attorney's Office, which may launch a criminal investigation. In Texas, drug diversion is a serious offense that could lead to felony charges, putting both your license and your freedom at risk.



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. If you are facing a BON investigation, you should hire an attorney because your license, reputation, and career are at stake. The BON's primary role is to protect the public, not to defend the nurse, and investigators are trained to gather evidence that could justify disciplinary action. Without legal representation, you may unknowingly make statements or provide information that could be used against you, even if you have done nothing wrong.

We can help guide you through the process, help craft a strategic and well-documented response, and ensure that your rights are protected. We can also challenge weak or unsubstantiated evidence, negotiate for lesser penalties if needed, and represent you in hearings.

Since BON investigations can also lead to criminal referrals in cases involving drug diversion, patient harm, or fraud, legal representation is essential to avoiding potential felony charges. You have worked hard to earn your license and having an attorney can be the difference between keeping it or losing it.

WHAT HAPPENS AFTER THE BOARD INVESTIGATION IS OVER?

There are potentially 3 outcomes following a BON:

- 1. The allegations are unfounded, insufficient or lack merit.**

This means that the investigator has looked into the complaint, talked to witnesses, looked over charts, reviewed your response and determined there is nothing there. There is no violation of the NPA at all. The case is closed with no further action taken. Your license remains intact.

2. The complaint has merit and the Board has proposed an Agreed Order against your RN or LVN License.

Unfortunately, this is the most common result. When the investigation concludes, evidence is reviewed, and the BON can offer you an Agreed Order to sign. The Agreed Order is a form of disciplinary action that allows you to avoid more severe penalties, such as license suspension or revocation, by agreeing to certain conditions. These conditions can include probation, supervision, additional education or training, fines, or drug testing and monitoring in cases involving substance abuse.

We can negotiate with the BON once an Agreed Order is proposed. However, if you do not sign the Agreed Order or a resolution cannot be reached, your case will be referred for Formal Charges to be filed against your license.

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

In certain situations, the BON may issue a Corrective Action Order (CAO), which is less severe than formal disciplinary action but still requires corrective measures. CAOs are typically issued for minor infractions that do not significantly risk patient safety. Depending on the violation, you may need to complete additional education courses or pay an administrative fine. While a CAO is a public record, it is not classified as formal discipline and does not appear on your licensure history.

Obviously, your goal in having investigation representation is to avoid having an Agreed Order or Formal Charges filed against your nursing license. 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 Agreed Order or Formal Charges are 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 BON disciplinary process where you have a chance of influencing the final outcome. 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 Agreed Order or Formal Changes against your license, what can you do to protect yourself?

1. Know your rights.

- Now you know them.

2. Do not ever provide an investigation response to the BON without attorney representation.

- Your attorney will give you the best chance of avoiding an Agreed Order or Formal Charges, and if those outcomes are 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 BON and their investigators. How else would we know that the BON is requesting you to provide a response without knowing any of the facts of the investigation? It's happening to our clients. How else would I know that the BON wants you to take a lie detector test and use your answers against you? It has happened to our clients. How else would I know how these investigations 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.