

# TAANA'S POSITION ON STATUTES OF LIMITATION & RETAINED JURISDICTION IN NURSING

*“Justice delayed is justice denied.”*

*William E. Gladstone*

Released, **October 13, 2016**, advocating for  
**NURSES licensed throughout the United States of America<sup>i</sup>**

*The American Association of Nurse Attorneys (“TAANA”), established in 1982, is a non-profit organization whose Fellow members have combined the legal and nursing professions, holding degrees in both nursing and law. TAANA’s mission is to provide resources, education, and leadership to its members as well as the medical and legal communities on issues related to health law and policy.*

## **PROBLEM PRESENTED:**

**The nursing regulatory system in America is in need of consistently codified  
STATUTES OF LIMITATION and legislative mandates placing limits on  
RETAINED JURISDICTION in all states.**

Statutes of Limitation are a well-established part of the American Legal System.<sup>ii</sup> The vast majority of criminal and civil actions in the United States are subject to Federal and State commencement deadlines. While there are exceptions for more heinous crimes such as rape or murder;<sup>iii</sup> most actions involving intentional or negligent acts such as drunk driving, sexual assault, wrongful death, medical malpractice, discrimination, wrongful termination, and other wrong-doings are typically barred if not commenced, prosecuted or resolved within a specified timeframe. Yet, statutory limits are exceptionally rare in nursing regulation.

Without system-wide Statutes of Limitation and parameters for retained jurisdiction, State Boards of Nursing (“Boards”) may be overly burdened by stale cases which undermines the Boards’ mission to protect the public. Untimely reports can lead to prosecutorial delays, spoliation of evidence and infringements on nurses’ due process rights. The harm to nurses tends to be exponentially disproportionate when the right to retain jurisdiction is asserted to initiate actions against previously-licensed nurses despite years of lapse or inactivity.

The public is best served when Boards address potentially dangerous situations in a timely manner. Statutes of Limitation encourage immediate reporting by those who may be contemplating the submission of information to the Board. Once reports of unprofessional conduct are received, the Board determines whether the allegations presented rise to the level for disciplinary action. With or without formal discipline, the Board may recommend corrective interventions meant to rehabilitate nurses to reduce the chances of repeated mistakes in the future.

With the advent of NURSUS,<sup>iv</sup> other State Boards and the public are instantly notified when a ‘participating’ Board reports the disciplinary action taken against a licensee. NURSUS has arguably become the Boards’ greatest asset in public protection as the most widely used reporting system for disciplinary actions taken against nurses throughout the U.S.

Today, nearly all Boards participate in NURSUS by permanently reporting disciplinary actions and other information to a centralized database.<sup>v</sup> Yet, when investigations, prosecutions and final

resolutions are delayed, the public may be placed at further risk when potentially dangerous patterns of behavior continue unmentioned, uncorrected and unreported for long periods of time.

Retained Jurisdiction is inherent in nursing as each Board remains responsible for regulating its licensees to ensure public safety. When a license has already lapsed or expired for a number of years, however, taking further action based solely on discipline taken in another jurisdiction often causes significant undue harm to nurses with no added benefit to the public.

## **TAANA'S POSITION:**

### **Consistently codified Statutes of Limitation and legislatively mandated limits on Retained Jurisdiction are needed in all states in order to protect nurses *and* the public.**

In nursing regulation, Statutes of Limitation are lacking in nearly all states at every level of the administrative disciplinary process.<sup>vi</sup> Regardless of how long it takes for an original complaint to be filed and an investigation to be initiated, nurses are usually given less than thirty days to respond to Board notices of a pending investigation. Yet, as respondents, nurses often wait years to learn their fate after being accused of a single mistake or lapse in judgment. If disciplined in one state, they may then need to start the defense process all over again for the same offense in another state whenever a Board decides to take action against them in the future.

Even when nurses have engaged in self-correcting activities and have completed all Board requirements with subsequent years of good behavior, nurses may be subjected to further disciplinary action in other states. These untimely redundant disciplinary actions for matters which have already been resolved and published on NURSUS provide little added benefit to the public

Statutes of Limitations are difficult to find in nursing legislation and even when Nurse Practice Acts are silent on retained jurisdiction, the authority to take further action appears to remain in perpetuity. In the absence of statutory limits, Boards may be unnecessarily burdened and nurses may be unfairly prejudiced or unduly harmed. TAANA is concerned about the impact on nurses and the public when Boards exercise unlimited authority and jurisdiction throughout the nursing regulatory system.

but tend to cause inequitable harm to nurses and their families.

TAANA opines that consistent Statutes of Limitation and reasonable restraints on Retained Jurisdiction are needed throughout the nursing regulatory system. Specific limiting language will reduce unnecessary delays by encouraging immediate reports and prompt investigations of alleged misconduct with timely outcomes. This will ensure public safety and prevent undue harm to nurses.

Years of experience and extensive research are culminated in this position paper to increase awareness of the troubling and perhaps unintended consequences presently occurring in the absence of statutory limits on disciplinary actions. Real-life case studies are included to demonstrate why TAANA is proposing that Statutes of Limitation and legislative restrictions on Retained Jurisdiction must be instituted within the nursing regulatory system.

**TAANA URGES NURSES, EDUCATORS, BOARDS AND LEGISLATORS TO TAKE IMMEDIATE ACTION TO CREATE A HIGHER LEGAL STANDARD IN NURSING BY SUPPORTING THE CODIFICATION OF STATUTES OF LIMITATION AND REASONABLE RETAINED JURISDICTION FOR NURSES IN ALL STATES.**

## **BACKGROUND:**

The Nurse Practice Act (“NPA”) in each state or territory defines both the practice of nursing and the authority granted to Boards. Boards have express authority to receive complaints, initiate investigations and take disciplinary action against its licensees if deemed appropriate and necessary to protect the public.

Close review and comparison of each NPA shows some general similarities but also exposes tremendous inconsistencies in the detailed application of nursing rules and regulations among jurisdictions. Vague or inconsistent statutory language makes it difficult for nurses to fully understand their rights and responsibilities while licensed and working in one state or another.

With few exceptions, our collaborative review of the NPAs in all jurisdictions revealed scant language, if any, describing the time in which: (1) a complaint must be filed;<sup>vii</sup> (2) the Board must complete an investigation; (3) formal disciplinary action must be taken against a licensee; (4) reciprocal actions must be initiated and completed; or (5) a Board retains jurisdiction to take action against a lapsed or expired license.

## **STATUTE OF LIMITATIONS:**

A Statute of Limitations is a law that bars claims after a specified period of time.<sup>viii</sup> Its purpose is to require diligent prosecution of complaints, to provide finality and predictability in legal affairs, and to ensure that complaints are resolved while evidence is reasonably fresh and available. With administrative proceedings, a statute of limitations would establish a timeframe for filing a complaint, conducting an investigation, and reaching a final resolution for all matters considered by a regulatory agency or Board.

In Utah, there is a statute of limitations barring disciplinary action against a licensee for unprofessional or unlawful conduct if ten years have passed since the occurrence of the conduct.<sup>ix</sup> In Florida, an administrative complaint against a licensee must be filed within six years after the time the incident or occurrence giving rise to the complaint that took place; unless the conduct involves criminal actions, diversion of controlled substances, sexual misconduct, or impairment of

the licensee, in which case, the 6-year time-frame is extended.<sup>x</sup>

While only a few states include language amounting to a Statute of Limitations in their NPAs or other administrative codes,<sup>xi</sup> some Boards have instituted policies which contain limiting language. While these policies are helpful, they are not law. Internal Board policies and procedures are not regulated or subject to legislative review. As such, Boards may choose to ignore such policies without fear of reversal on appeal.

Unless there is a Statute of Limitations expressly included within the publicly codified nursing statutes or NPA, nurses have no certain legal basis to argue that a claim should be barred or to prevent untimely prosecution. While other equitable remedies may be available, Boards have primary jurisdiction over licensees, and when ordering disciplinary actions, Courts defer to the Boards’ decisions under judicial review.

## **RETAINED JURISDICTION:**

Retained jurisdiction statutes allow a regulatory agency to take action against its licensees; even when the alleged conduct at issue did not occur within its jurisdictional boundaries. Once a Board issues a license, it will retain the jurisdiction and authority to take whatever action it deems necessary against that license in the interest of protecting the public in its state or territory.

A few states have statutes limiting the time in which a Board retains jurisdiction.<sup>xii</sup> In Arizona, for

example, the Board retains jurisdiction to proceed with an investigation or a disciplinary proceeding against a nurse whose license or certificate expired not more than five years before the Board initiates the investigation.<sup>xiii</sup> Yet, most states without limitations on retained jurisdiction continue to take action long after a nurse’s license to practice has lapsed or expired. In Florida, a change in the status of license (active, inactive, retired, or delinquent license) does not alter the Board’s right to impose

discipline or enforce discipline previously imposed on a licensee for acts or omissions committed while the license was active, inactive, retired or delinquent.<sup>xiv</sup>

Without codified limitations on retained jurisdiction statutes, Boards' authority to act will continue in perpetuity; even decades after a license has lapsed. This is especially problematic for traveling nurses or those who have worked in many states over the years.

Furthermore, once an investigation is initiated, Boards with no statutory restraints (and unlimited subpoena power) may discover other claims of unprofessional conduct which were never validated or reported to the Board, and which may have occurred several years prior, with or without the nurse's knowledge. Boards may then increase formal charges even though this extemporaneous information was not part of the original complaint.

## **RECIPROCAL ACTIONS & DOUBLE JEOPARDY:**

Because nurses are able to apply for licensure in multiple states, either through a compact agreement or via endorsement on a state-by-state basis, nurses disciplined in one state may, in essence, be subject to a reciprocal action in another state tantamount to double jeopardy. When nurses demonstrate successful remediation by satisfying the disciplinary terms in the originating state's order or settlement agreement, the next state may take disciplinary action based solely on the action already taken in the interest of protecting the public within its jurisdiction.

Courts have determined that double jeopardy only applies in criminal cases due to the differences

in purpose for the actions taken. Yet, when the goal of public protection is outweighed by significant harm caused to those being repeatedly disciplined, it begins to look more like cruel and unusual punishment.

Many nurses' lives have been destroyed due to the harsh burdens placed upon them by having to repeatedly defend their licenses for the same conduct for many years, sometimes decades after the fact. The case studies below illustrate these issues and demonstrate the urgent need for uniform statutes of limitation and limiting retained jurisdiction statutes for the nursing regulatory system throughout the United States.

## **CASE STUDIES:**

The following cases demonstrate the overly burdensome system currently existing throughout the US. These examples highlight some of the realities nurses face when going through the disciplinary process where no statutes of limitation exist and the retention of jurisdiction is unspecified. Without change, conditions may continue to worsen by increasing risks to the public as more good nurses are lost to involuntary retirement, disability or suicide.

*With the exception of published court cases, the matters presented have been modified to protect the identities of the nurses disciplined and the Boards involved. These are real-life examples and all case facts and timelines have been verified on NURSUS for accuracy.*

### **CASE STUDY A:**

#### **MALPRACTICE SETTLEMENT OPENS THE DOOR TO ENDLESS INVESTIGATION**

##### **(Pandora's Box)**

As stated, most jurisdictions do not have laws requiring Boards to investigate and resolve complaints in a timely manner. Investigations conducted by the State in this example took approximately five years from inception to final resolution. An Advance Practice Registered Nurse ("APRN") was named as a defendant in a medical

malpractice lawsuit for alleged misconduct that occurred in June 2011.

When the malpractice case settled in the latter part of 2013, the insurance carrier reported the settlement to the National Practitioner Data Bank ("NPDB"). The NPDB subsequently reported the action to the Board as required by law.

Approximately two months later, the Board sent the APRN a Notice of Complaint and Investigation. Approximately three years after the matter was initiated, the Board sought additional information, which appeared to be unrelated to and beyond the scope of the complaint filed by the NPDB.

After five years of lingering investigation, the Complaint in this case was ultimately dismissed. Nonetheless and unfortunately, this APRN had an open investigation hanging over her head for five years.

### **CASE STUDY B:** **BOARD TAKES MANY YEARS TO COMPLETE INVESTIGATION** **(Harm despite closure without discipline)**

In March 2008, a group of Nurses voluntarily agreed to “temporarily” surrender their licenses pending closure, settlement or hearing on the merits. Due to the unique and highly publicized nature of the allegations presented against them, these Nurses agreed in good faith to temporarily relinquish their licenses assuming the matter would be promptly investigated and believing their names would be cleared while maintaining their innocence of wrongdoing. These nurses had no idea it would take several years for the case to be resolved.

Once the Nurses were exonerated by State and Federal prosecutors and the civil matters began to settle, they started requesting closure of the pending administrative matters. Despite the lack of any further investigative activity, their matters remained pending for several more years. Board Staff was willing to settle with an agreement for disciplinary action. However, maintaining their innocence meant settlement was not possible.

Due to the public nature of this case, and because administrative hearings proceed with the lowest level of proof required to establish fault, pushing for a hearing would have posed significant risk for both sides. Waiting for closure was the only option.

In July 2016, after eight years, the Board finally agreed to close the matters without further action. The agreements for voluntary temporary surrender pending hearing were *not* considered disciplinary action by the Board. Nevertheless, the inability to work as nurses for eight years was a severe form of punishment to these nurses, their families, friends and former colleagues. Each of their lives were devastatingly impacted both financially and emotionally.

Unlike this case study where there was no statute or policy indicating how long the Board could take

to complete an investigation or resolve a case, in *State ex rel. Miles v. West Virginia Board of Registered Professional Nurses*,<sup>xv</sup> the Supreme Court of Appeals of West Virginia concluded that the Board exceeded its jurisdiction when it failed to timely resolve a complaint against Nurse Miles. The Board failed to comply with a state statute that required complaints to be resolved within one year of the Board’s issuance of an interim status report.

In 2013, Miles was terminated from her emergency room job. The hospital alleged that she violated its narcotic waste policies by failing to properly document the administration of Dilaudid; she allegedly signed out the medication but did not administer it to the patients. Miles denied that she diverted the medication and said that her documentation errors were due to lack of sufficient training in the use of the electronic record. Miles “self-reported her termination to the Board.”

West Virginia Code § 30-1-5(c) required the Board to investigate the complaint and resolve the matter within one year of its issuance of a six-month status report unless it obtained a written agreement to extend the deadline from the complainant.<sup>xvi</sup> The Board did not resolve the case within the statutory time-frame and it did not obtain a written agreement for an extension. The Court recognized the Board’s mandate to protect patients and the public and to ensure the integrity of the nursing profession by holding nurses accountable for wrongdoing. Nevertheless, the Court ruled that the Board lacked jurisdiction to take further action and the complaint against Miles was dismissed as “the Legislature has determined that professionals are entitled to resolution of the cloud over their license within a specific time.”<sup>xvii</sup>



Many nurses wait years for their matters to be resolved. Whether their licenses are active, lapsed or temporarily surrendered during the process, being under investigation for any period of time is considered to be one of the most stressful things nurses experience. With limiting statutes in place, Courts can support nurses when they seek relief for failure to prosecute or resolve administrative cases in a timely manner.

**CASE STUDY C:**  
**DISCIPLINARY ACTION EIGHT YEARS POST LAPSE BASED SOLELY ON**  
**ACTION IN ANOTHER STATE**

**(5 years after remediation and release from probation)**

The nurse in this case (“RN”) was licensed in State-A from 1979 until 2007 when the license expired due to non-renewal. In 1991, RN relocated to State-B where she obtained a license by endorsement. She never practiced in State-A again but continued to renew her license until 2007.<sup>xviii</sup>

RN practiced without incident in State-B from 1991 until 2005 when her employer (hospital) confronted her about misappropriating narcotics for personal use. She had become addicted to pain medications following multiple surgeries. RN voluntarily surrendered her license in State-B.

In 2007, a year after completing appropriate treatment, RN entered into a Final Consent Order with State-B. The Board imposed a two-year Suspension, stayed one year, and placed RN on Probation. Three years later, in 2010, State-B terminated probation and granted RN an unrestricted license.

In 2015, State-A filed an Order to Show Cause seeking reciprocal action against RN’s expired

license based solely on the discipline imposed by State-B. State-A had no statute of limitations for licensure actions and no limit on retained jurisdiction. The Board sought to suspend, revoke or otherwise restrict RN’s expired license even though eight years had passed since State-B imposed discipline. State-A argued that it had retained jurisdiction over RN’s license despite its expiration because the nurse could reactivate or reinstate her license at any time. *RN contested the case and State-A imposed a Public Reprimand following a hearing.*

This nurse was investigated by a Board twenty-four years after she moved out of the jurisdiction, eight years after her license expired, and five years after she was released from probation in the originating state. Permanent disciplinary action was based solely on events that occurred elsewhere a decade earlier by a Board where she no longer had any community ties and where there was no threat to the public.

**CASE STUDY D:**  
**PROBATION AGREEMENT IN ONE STATE LEADS TO SIMULTANEOUS INQUIRIES**  
**AND INCONSISTENT ORDERS IN MULTIPLE JURISDICTIONS**

**(Licensed in 22 states between October 2001 and July 2013)**

Unlimited retained jurisdiction can be challenging for any nurse. It is especially problematic, however, for nurses who accept travel assignments or move from state to state and obtain a number of licenses over a span of years. As was demonstrated in Case Study C, even when a nurse’s license is lapsed, Boards with retained jurisdiction may open a complaint and investigation based solely on the actions taken in another state.

Here, a travel nurse (“TRAVELER”) obtained licenses in twenty-two different states between 2001 and 2013. In 2015, while working as a Registered Nurse on travel assignment in a rural hospital, she

received her first nursing board complaint. TRAVELER appeared impaired when she arrived to work and tested positive for alcohol. Instead of calling in sick, she took over-the-counter medications hoping for relief so she would not have to cancel her shift.

When Board-A could not reach her, it posted a warning on NURSYS to alert other states and prospective employers of a possible problem. Before State-A concluded its investigation in March 2016, three other states were already reaching out to TRAVELER with inquiries and Notices of Investigation (Boards-B, C and D).

Once TRAVELER reached an agreement for probation with Board-A, she notified the Boards in all other states where she had been actively licensed at any time within the past five years (currently active or lapsed). She received another Notice of Investigation from Board-E as soon as the probation order was posted on NURSYS.

By August 2016, two of the four inquiring states concluded their investigations and others (both lapsed and active) started issuing Notices of Investigation. Board-B placed her on probation following a hearing based on Board-A's order for probation and based on the fact that a positive test for alcohol would also lead to disciplinary action in its jurisdiction. Board-C closed its investigation issuing a letter of closure finding that no further action was deemed necessary to protect the public at that time.

As the sole provider for her family, TRAVELER describes her life as being "in shambles" as she struggles to find employment, files for bankruptcy and relinquishes her family's vehicles for repossession. She cannot afford legal counsel in twenty different states and she is not prepared or qualified to defend herself. She has no history of drug or alcohol abuse and she had an excellent employment history prior to this lapse in judgment.

Case Studies C & D demonstrate how actions in one state may result in additional actions with varying outcomes necessitating multiple hearings for the same conduct. In both cases, disciplinary action was taken by states where the nurses had lapsed licenses and where the nurses had no intent on returning.

**CASE STUDY E:**  
**ONE REPRIMAND LEADS TO PROBATION IN SECOND STATE**  
**PLUS, A REPRIMAND IN A THIRD STATE ON A 27-YEAR-LAPSED LICENSE**  
**(Untethered Jurisdiction)**

This nurse ("NURSE-E") was first licensed in 1984. Within a few years, she moved out of state and obtained licenses in two additional states. After 29 years of practicing as a Registered Nurse, NURSE-E was reprimanded for the first time in her career for doing exactly what she was trained to do by her employer-physician. For four years, she and other nurses were examining patients and using the physician's signature stamp to complete and submit forms under his direction. There were no concerns related to her competency and no complaints of malpractice. The Board determined that performing physical exams and using the signature stamp to sign off on medical provider exam forms amounted to practicing beyond the scope of her nursing practice.

- NURSE-E reached an agreement in September 2013 with the Board in State-A for a Public Reprimand, costs and continuing education.
- Two years later, on September 3, 2015, State-B placed NURSE-E on probation. After nine months, she voluntarily surrendered her license in State-B.
- On September 4, 2015, the day after she was placed on probation in State-B, she was

reprimanded in State-C based solely on the action taken in State-A. This action was taken by default in her absence because she failed to respond to Board's inquiry regarding the action taken in State-A.

States B and C did not contact the Board in State-A, did not conduct an independent investigation and did not consider any mitigating evidence. NURSE-E was an excellent nurse with no prior complaints or violations throughout her successful and long nursing career. She satisfied all terms of the public reprimand in State-A. Yet, the reciprocal action taken against her in State-B was more severe than the discipline originally taken in State-A.

NURSE-E had not contacted the Board in State-C since her license expired in 1988. Yet, the Board determined that it was necessary to discipline her after twenty-seven years in order to protect the public.

When nurses become the subject of board investigations and complaints, they often describe "the waiting" as the most difficult part of the disciplinary process. Most nurses are terminated from their jobs before the Board notifies them of the complaint. Many experience extreme levels of

emotional and financial distress. Depression, anxiety, chest pain, panic attacks and ulcers are common occurrences as nurses suffer in silence.

In rare cases, mounting pressures can lead to heart attack, stroke, mental breakdown, and even suicide...these are the unintended results, which

could be described as “cruel and unusual punishment.” Statutes of Limitation and reasonable restrictions for actions taken under the assertion of Retained Jurisdiction are needed to help protect the public and nurses.

## **CONCLUSION:**

Based on our extensive review of current trends, existing legislation and recent case studies, TAANA concludes there is an immediate need for the codification of uniform STATUTES OF LIMITATION for nursing disciplinary actions in all jurisdictions throughout the United States. TAANA also recommends the adoption of reasonable and consistent legislative mandates placing limits on RETAINED JURISDICTION for all nursing regulatory agencies throughout the country.

Specific language is needed within each State’s **Statutes of Limitation** to provide guidance at each of the following stages of the disciplinary process for consistent and fair outcomes.

### **Legislative changes are necessary to set time limits for:**

- (1) **Complainants to submit allegations to the proper authorities;**
- (2) **Boards to initiate and complete investigations;**
- (3) **Boards to prosecute cases and report final dispositions;** and
- (4) **Boards to take reciprocal actions against actively licensed nurses** (actions solely based on actions taken in another state).

TAANA also emphasizes that nurses should be able to move out of state and allow their licenses to lapse or expire without fear of further prosecution after a certain number of years have passed; regardless of any allegations that may be presented against them in the future.

If disciplined, nurses who satisfy all board requirements should be able to relocate without fear of denial or duplication of actions for past mistakes after remediation or a reasonable amount of time has passed.

### **There must be limits on Retained Jurisdiction.**

More often, nurses are repeatedly disciplined in multiple states; even for single or minor errors. Meanwhile, Boards are increasingly overwhelmed by having to consider every mistake from the past for potential action against those who no longer pose a threat to the public. Reviewing matters that are immaterial to public safety takes valuable time and resources. Formally disciplining nurses who cease to have ties to the community can lead to delays of important, potentially dangerous situations that may be in need of attention in order to protect the public from the potential for imminent harm. It is not necessary for Boards to consider every prior action from other jurisdictions for decades on end. This policy is overly burdensome to all parties involved.

***TAANA urges the immediate adoption of reasonable and consistent Statutes of Limitation which specifically include limits on Retained Jurisdiction in every state. Please see the following page for our proposed model language.***



## **PROPOSED STATUTES/ADMINISTRATIVE CODES:**

(Sample Language):

### **§990.90 Limitations on disciplinary proceedings and actions against licensees and certificate holders.**

- 1) Except as otherwise provided, all administrative actions must be commenced and resolved within the periods prescribed in this chapter.
  - a) All complaints shall be submitted to the Board for consideration no later than two years following the last date in which the alleged incident, act or omission occurred in violation of this Chapter or other relevant statutes in order for an action to be initiated for investigation.
  - b) All complaints received after two years from the last date of the unprofessional conduct, acts or omissions alleged shall be closed without further notice or investigation.
- 2) Criminal Convictions: Unless otherwise specified elsewhere within this chapter, and unless the relevant conviction is deemed to be currently prohibitive by any other statutes at the time of the Board's discovery of the conviction,
  - a) no action or investigation shall be initiated based on criminal convictions more than three years post conviction or absolute discharge/closure of the conviction, whichever is sooner; and
  - b) there shall be no limitation on actions based on felony convictions for murder, rape or acts of terrorism.
- 3) Sealed Criminal Records: Under no circumstances shall a licensee or certificate holder be required to disclose, or be subject to investigation or disciplinary actions for criminal arrests or convictions which have been sealed under court order.
- 4) Board-Directed Actions: All Board-directed investigations based on alleged acts or omissions independently discovered or alleged by the Board or Staff must be:
  - a) initiated no later than two years from the date of the alleged wrongdoing, acts or omissions; and
  - b) resolved with final disposition within two years or the matter shall be dismissed.
- 5) New Information: Under no circumstance shall a Complaint be closed and reopened after two years from receipt of the original complaint for further investigation.
- 6) Other State's Actions: Actions based on actions taken in another state where a license or certificate has previously been issued must be:
  - a) initiated no later than two years from the date the other state's action became final;
  - b) resolved within two years from the date of initiation; and
  - c) based on triggering misconduct which led to the first action. No action shall be based solely on actions taken by a subsequent state (where no incident occurred).
- 7) Retained Jurisdiction: The Board retains jurisdiction to initiate a disciplinary proceeding over any license or certificate that has expired, lapsed or been placed on inactive status for a period not to exceed five years. All allegations, reports or information received more than five years after a license or certificate has expired shall be barred from further action.

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- <sup>ii</sup> University of Pennsylvania Law Review, Vol. 102 (1954), *Statute of Limitations in Criminal Law*, page 631 citing, 1Laws of the United States 113, Sect. 32 (1789-91); federal system adopted Statutes of Limitation in 1790.
- <sup>iii</sup> No Murder SOL in US; Rape SOL per state, See Chart, <https://apps.rainn.org/policy/compare/statutes-export.cfm>.
- <sup>iv</sup> See, NURSYS.com: Reporting system created and maintained by the National Council for State Boards of Nursing.
- <sup>v</sup> See, NURSYS.com: HI, OK and LA Boards are not currently participating in (reporting to) NURSYS.
- <sup>vi</sup> In some states, limiting statutes to the administrative disciplinary processes may be found for other fields or types of providers; however, nurses were excluded.
- <sup>vii</sup> Exception example: In Florida, the statute of limitations for filing a complaint against a licensee is six years from the time of the incident or occurrence giving rise to the complaint, Fla. Stat. 456.073(13).
- <sup>viii</sup> Black's Law Dictionary
- <sup>ix</sup> Utah Code Ann. § 58-1-401(6)(b)
- <sup>x</sup> Fla. Stat. 456.073 (13)-Disciplinary proceedings
- <sup>xi</sup> See, for example, 24 Del. C. § 1910(5)(a)-(b); 225 ILCS 65/60-10(h)(1), 225 ILCS 65/60-10(h)(2), 225 ILCS 65/70-55; Miss. Adm. Code 30:2820 Rule 1.2(A); N.M. Stat. Ann. 61-3-28(D); Utah Code Ann. §58-1-401(6)(a)-(b)
- <sup>xii</sup> A.R.S. § 32-1664(c); CDR 24-1900.15.10; HAR §16-89-31, HRS § 436B-22; Miss. Code. Ann. § 73-15-29(1)(d), 30:2820 Rule 1.2(W); 59 Okl. St. § 567.8(K); S.C. Code Ann. § 40-33-115.
- <sup>xiii</sup> A.R.S. § 32-1664(c)
- <sup>xiv</sup> Fla. Stat. 456.036(13)
- <sup>xv</sup> Supreme Court of Appeals of West Virginia, Decided, September 17, 2015, No. 15–0131.
- <sup>xvi</sup> For reasons that are unclear from a reading of the case, the complainant was the hospital that terminated Miles, not Miles who had self-reported.
- <sup>xvii</sup> The Court relied heavily on its prior decision in *State ex rel. Fillinger v. Rhodes*, 230 W. Va. 560, 741 S.E.2d 118 (2013) to reach its decision in the Miles case. Justice Loughry's concurring opinion in *Fillinger* expresses the concern that “[d]ue process and fundamental fairness clearly dictate that a nursing professional subject to the disciplinary authority of its licensing board be afforded a fair and prompt hearing...” while also expressing concern about the “alarming allegations in the underlying complaints.”
- <sup>xviii</sup> Many nurses renew their licenses even when they have no plans to return. This prolongs the jurisdiction a Board has over the nurse even where there are statutes or policies limiting jurisdiction.