



# BOARD OF NURSING



**DIVISION OF LEGAL SERVICES AND COMPLIANCE**

**ANNUAL REPORT**

**JANUARY 1, 2016 – DECEMBER 31, 2016**

The Wisconsin Department of Safety and Professional Services (DSPS), Division of Legal Services and Compliance (DLSC) provides legal services to professional boards, regulated industries and the Department regarding the investigation and prosecution/discipline of licensed credential holders for violations of statute and administrative rule.

DLSC is comprised of complaint intake staff, consumer protection investigators, regulatory specialists, paralegals, attorneys/prosecutors, Board Counsel, and management staff. The DLSC team of professionals is responsible for the complaint intake process, monitoring compliance with disciplinary orders, administering a confidential program for impaired professionals, called the Professional Assistance Procedure (PAP), performing audits of trust accounts, and conducting business inspections for pharmacies, drug distributors and manufacturers, funeral establishments, and barber and cosmetology schools and establishments.

As the Board of Nursing (BON) is charged with ensuring competent practice of licensed nurse professionals in the State of Wisconsin by protecting the public, deterring conduct, and rehabilitating the licensee, it enlists the services of DLSC in order to accomplish these goals. The BON relies on DLSC to provide investigation and legal services for complaints of unprofessional conduct filed against these licensees. As part of these services, DLSC provides a Nursing Team comprised of the staff identified below. The following briefly summarizes the responsibilities of these positions:

- **Attorneys (Prosecutors)** – Legal experts that perform specialized legal services relating to one or more areas of law. Prepares pleadings, briefs, legal options, orders and all types of legal documents and memorandums. Prepares findings of fact and conclusions of law, and negotiates orders. Administers oaths, examines witnesses, and issues subpoenas requiring appearance of witnesses and the production of documents. Presides at and conducts formal and informal hearings of varied complexity in connection with the administration of state laws and regulations.
- **Board Counsel** – Provide legal guidance to boards and agency staff on a wide variety of issues such as a board’s authority and jurisdiction with respect to legal review of disciplinary matters, assist with legal issues related to credentialing, interpreting statutes and administrative rules affecting the Board, and prepare for and attend board meetings to present legal analysis and give advice. Board Counsel also drafts, reviews and approves a variety of documents necessary to carry out board business. Finally, Board Counsel represents the boards in hearings before administrative law judges concerning application denials.
- **Complaint Intake Staff** - Evaluate and review incoming complaints and request information; process the opening and/or closing of cases; monitor complaints in the initial review process. Also performs other administrative and program-related support to DLSC.
- **Consumer Protection Investigators Advanced** - Plan, develop and conduct comprehensive investigations involving compliance with, or violations of, a wide range of statutes, rules, regulations, and/or standards.
- **Management Staff** - Manage subordinates and programs within DLSC.
- **Paralegals and Paralegals Advanced** - Perform a wide range and combination of professional-level, law-related activities to assist DLSC staff attorneys in the delivery of legal services, conducts specialized or complex legal research and the analysis of case law, assist attorneys at hearings, draft and prepare a variety of legal documents.
- **Paralegal Advanced and Regulatory Specialists (Monitoring and PAP)** - Regulatory work in the areas of compliance and/or enforcement for licensees who are being monitored with disciplinary orders and/or enrolled in the PAP.

In general, DSPS operates based upon a complaint-driven process, meaning the majority of compliance and disciplinary actions are the result of complaints submitted by outside sources, rather than DSPS' active search for misconduct. The complaint itself may come from a variety of sources, such as consumers and professionals who alert DSPS to the potential misconduct.

At other times, disciplinary action may be the direct result of inquiry by DSPS in conjunction with or at the request of the BON. [An example of such is the violation of a board order or practicing without an active license. Actions taken by the Board on such matters are the result of information received from DSPS]

### Screening

Once a complaint is received, it is routed to the attorney screener for review. The attorney screener determines if the complaint should be opened immediately, closed immediately or if the complaint should go to the entire BON Screening Panel. The BON Screening Panel consists of Board members (nurse professionals and public) as well as a DLSC prosecuting attorney. The BON screening panel brings together the professional expertise of the Board in addition to the expertise of the DLSC staff.

The Screening Panel confers and determines, based on information provided, whether a violation(s) may have occurred. The panel may consider many factors, such as the seriousness of the allegations, the harm or threat of harm, whether the dispute is already resolved, and whether the matter is primarily a civil or private dispute. If a complaint does have merit, or requires further investigation, the case is opened for investigation.

If a complaint does not warrant further action, it is closed at screening and a letter is sent out to the parties. For example, the panel may close a complaint when it is determined that no violation has occurred or if there is a lack of jurisdiction over the matter.

### Investigation

When a case is opened for investigation, a case advisor will be assigned, along with a DLSC investigator, paralegal and attorney. At the conclusion of the investigation, DLSC staff will submit findings of the investigation to the case advisor. [The case advisor is a member of the Board that provides professional expertise on the licensee's alleged misconduct.] If the evidence is insufficient to prove a violation or there are other legal reasons not to pursue prosecution, the case advisor and the DLSC prosecuting attorney will determine the specific basis for closing the case.

### Legal Action

If the investigation finds a preponderance of evidence that a violation has occurred, the case advisor and DLSC staff will consider options available to resolve the matter. In some circumstances, the matter may be resolved through non-disciplinary action such as an administrative warning or remedial education. However, if the licensee's misconduct cannot be corrected with a non-disciplinary option, or if the misconduct is common enough that all licensees within the profession must be alerted to its substandard nature, formal discipline may be warranted.

When formal discipline is warranted, the case advisor and DLSC legal staff will determine appropriate discipline and make specific recommendations to the BON for case resolution. Disciplinary action may be agreed to by the respondent in a stipulation, or, if an agreement cannot be reached, discipline may be pursued through the formal hearing process.

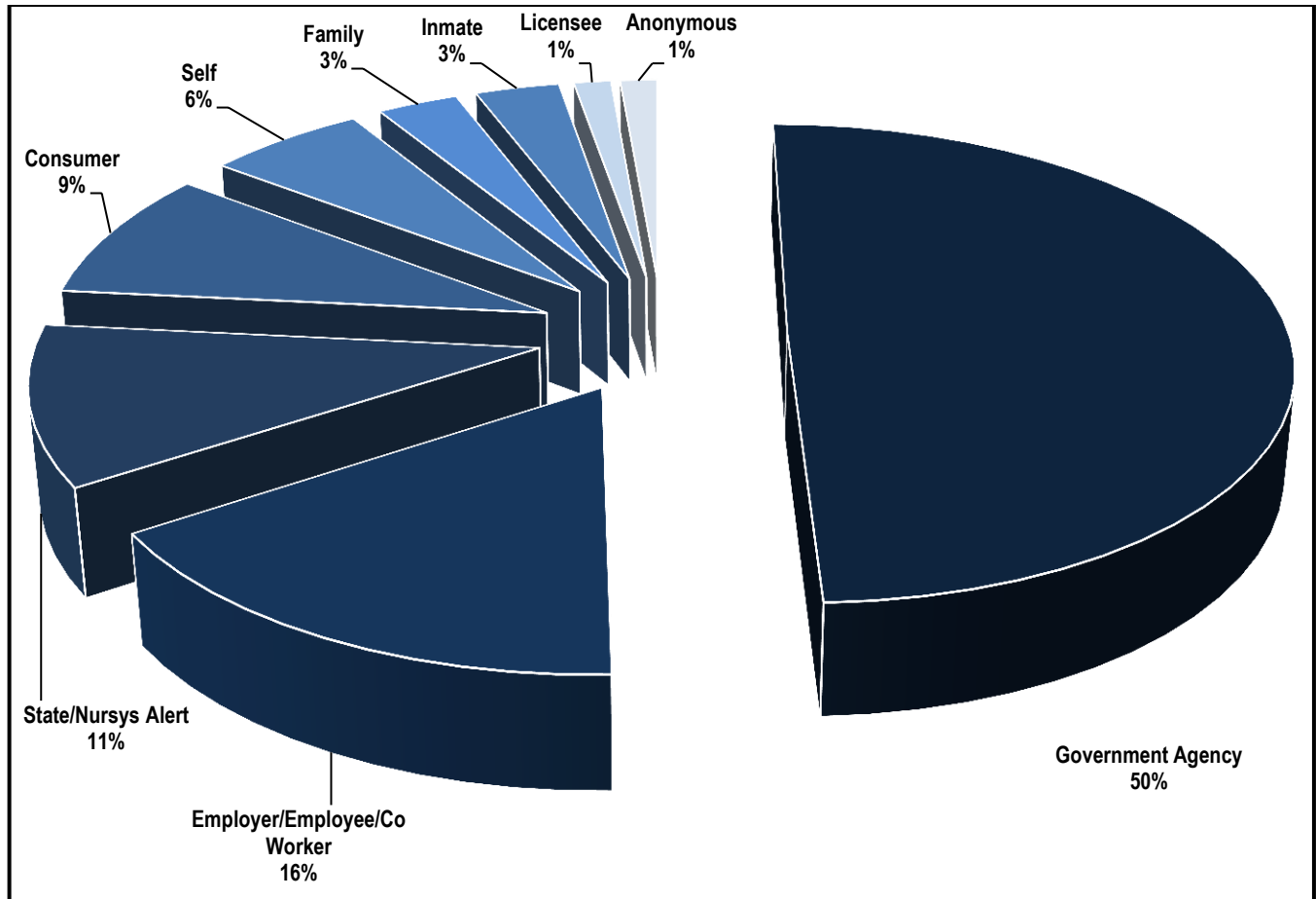
Disciplinary options available to the BON include:

- **Reprimand** – A public warning of the licensee for a violation.
- **Limitation of License** – Imposes conditions and requirements upon the licensee and/or restrictions on the scope of the practice.
- **Suspension** – Completely and absolutely withdraws and withholds for a period of time all rights, privileges and authority previously conferred by the credential.
- **Revocation** – To completely and absolutely terminate the credential and all rights, privileges and authority previously conferred by the credential.

## SOURCES OF COMPLAINTS RECEIVED

Data from January 1, 2016 to December 31, 2016

The BON received 764 complaints in 2016. There are multiple ways in which the BON may receive a complaint. Below is a graphical representation of the sources of the complaints received in 2016. It is important to note that a complaint may be received in one year however, due to the nature or course of the investigation, may not be resolved until the subsequent year(s).



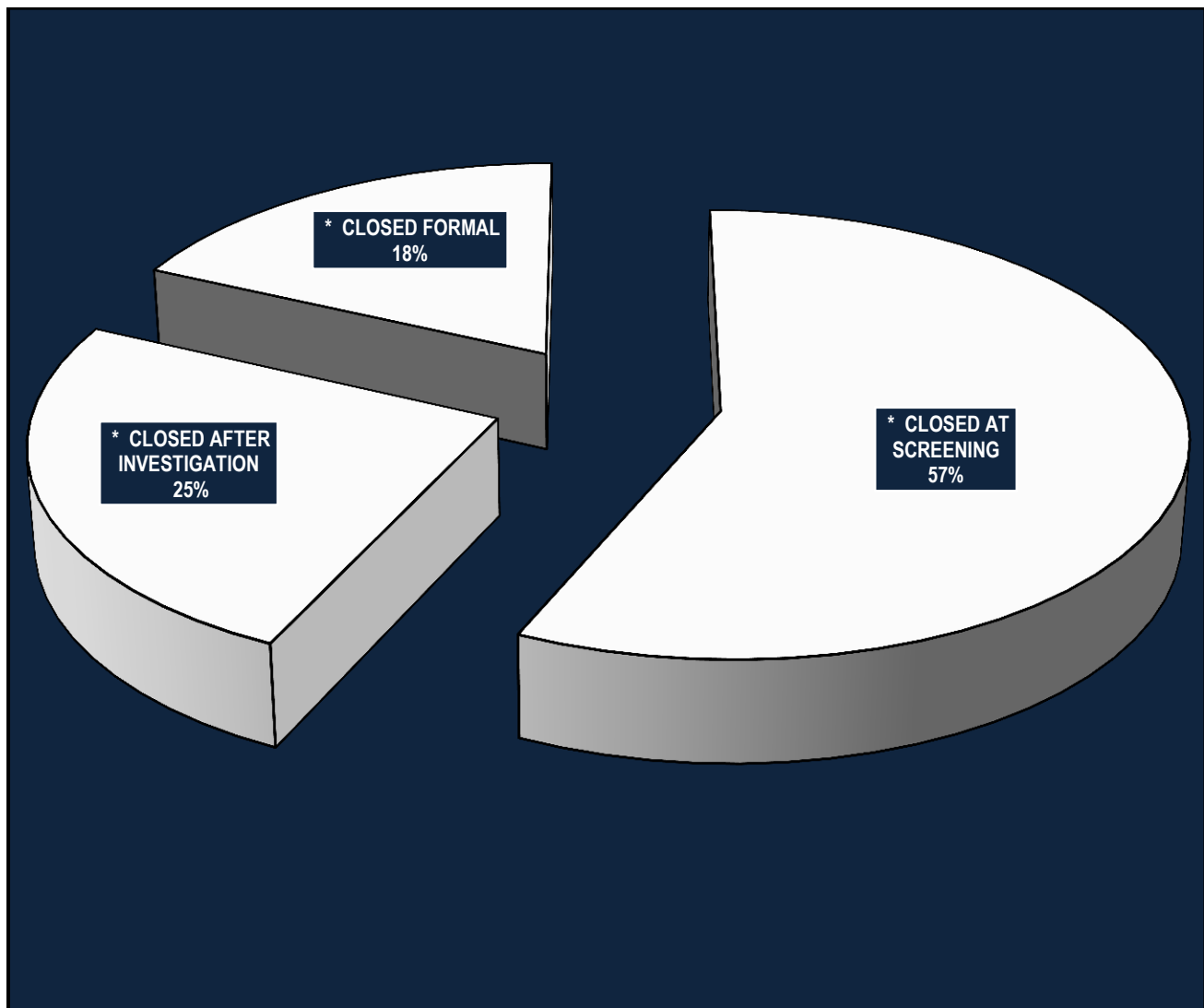
## WHEN ARE COMPLAINTS OR CASES/RESPONDENTS CLOSED?

Data from January 1, 2016 to December 31, 2016

Complaints/cases may be closed in the following ways:

- The BON prescreening attorney(s) or screening panel after review of the matter determines that an investigation is not warranted.
- After investigation when the case advisor, in conjunction with DLSC professionals, determines that the matter does not warrant professional discipline.
- After the board issues a formal disciplinary order.

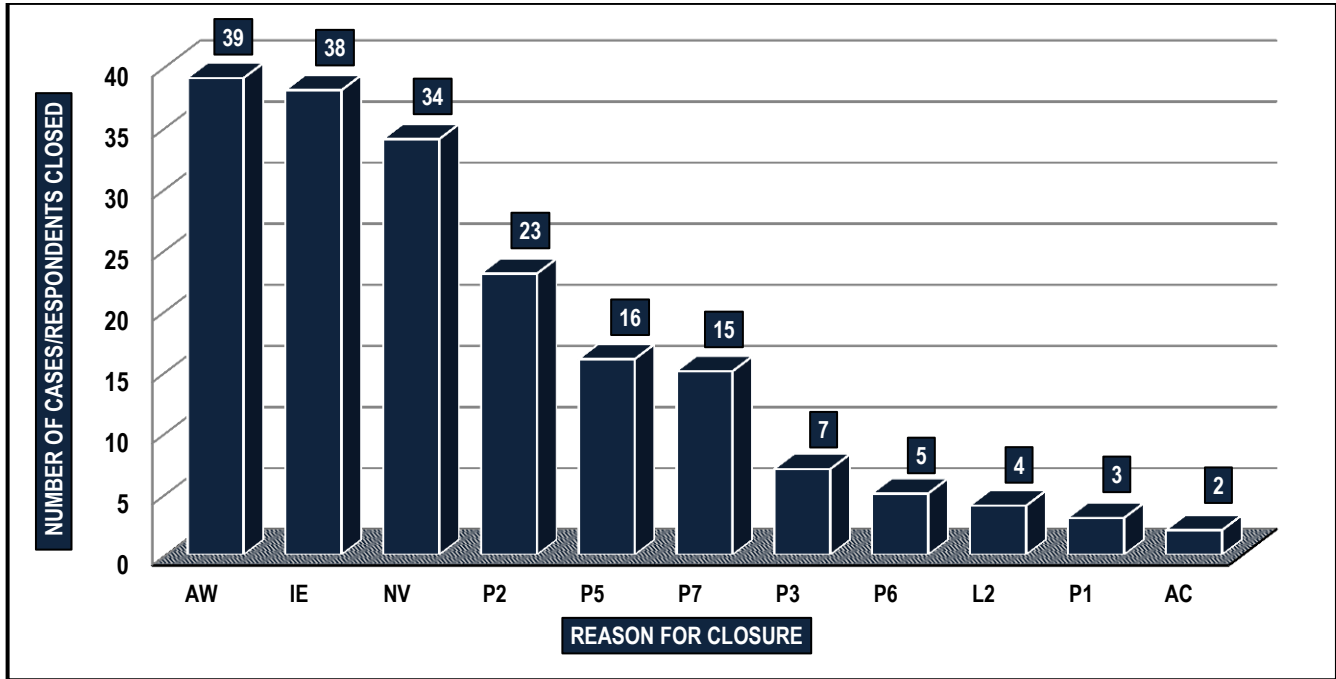
\* The following is a graphical representation of how complaints or cases/respondents were closed in 2016. It is important to note that cases closed in 2016 may have been received in previous years.



## CASES/RESPONDENTS CLOSED AFTER INVESTIGATION

Data from January 1, 2016 to December 31, 2016

186 cases/respondents were closed after investigation (without formal discipline). There are many reasons a case may not warrant formal discipline. For example, a case may be closed after investigation due to insufficient evidence to prove a violation has occurred. Or, after careful review and deliberation, the BON may exercise its discretion not to prosecute based on other considerations relating to the case. In order for a case to close after investigation, action must be taken by the BON. The following summarizes the BON cases/respondents closed after investigation, sorted by reason for closure.



- **AW - ADMINISTRATIVE WARNING** - There was an Administrative Warning issued to the credential holder pursuant to Wis. Stat. § 440.205. Administrative warnings do not constitute disciplinary action or the imposition of discipline and may not be used as evidence that the credential holder is guilty of the alleged misconduct.
- **IE - INSUFFICIENT EVIDENCE FOR PROSECUTION** - There is insufficient evidence to meet the standard of proof required to prove that a violation occurred.
- **NV - NO VIOLATION OF STATUTES OR RULES** - There is sufficient evidence to show that no violation of statutes or rules occurred.
- **P2 - PROSECUTORIAL DISCRETION** - There may have been a minor or technical violation but a decision was made not to commence formal disciplinary action on the grounds that compliance with statutes or rules has been gained.
- **P5 - PROSECUTORIAL DISCRETION** - There may have been a violation, but because the person or entity in question cannot be located, is no longer actively practicing or does not have a current credential to practice, a decision was made to close the case and place a “FLAG OR HOLD” on the credential in accordance with the Department’s “Hold Status and Flagged Credentials” Policy. In the event that the person or entity is located, an application for renewal of the credential is received or the credential is renewed, the case may be re-opened and reconsidered.
- **P7 - PROSECUTORIAL DISCRETION** - There may have been a violation, but the regulatory authority has taken action in regard to this credential holder that addressed the conduct and further action is unnecessary.
- **P3 - PROSECUTORIAL DISCRETION** - There may have been a violation that is more than a minor or technical violation. However, it is not a violation which caused serious harm, and a determination has been made that the expenditure of resources required to pursue the violation would greatly exceed the value to the public of having the matter pursued.
- **P6 - PROSECUTORIAL DISCRETION** - There may have been a violation, but litigation is pending which involves the credential holder and affects the licensing authority’s ability to investigate the case. At the conclusion of the litigation, the case will be reviewed and the licensing authority may consider the case once again.
- **L2 - LACK OF JURISDICTION** - There is authority to act on the subject matter of the complaint, but no authority to act regarding the person or entity in question.
- **P1 - PROSECUTORIAL DISCRETION** - There may have been a minor or technical violation but a decision was made not to commence formal disciplinary action because the incident in question was not seriously harmful to the public.
- **AC - ADMINISTRATIVE CLOSURE** - There is a duplicate complaint; a file was opened in error; or the Respondent named in the complaint is inaccurately identified.

## SUMMARY OF FINAL DECISIONS AND ORDERS (includes orders granting limited licenses)

Data from January 1, 2016 to December 31, 2016

136 cases/respondents were resolved through formal closure (board order) in 2016. Although the number may appear small, it often represents the most serious cases that require extensive resources, time and investigation.

The BON case advisor works with DLSC legal staff to determine the most appropriate discipline based on the violation(s). Considerations in determining discipline include the historical practices of the BON, prior violations by the licensee, the severity of the conduct (including the risk of potential harm), and the quality of evidence. Discipline is not punitive: actions taken against a nurse should be limited to the purposes of public protection, rehabilitation and to deter the licensee and others from engaging in similar conduct.

The following table represents the types of disciplinary actions in 2016. Please note: The total number of disciplines/outcomes will be higher than the number of Final Decisions and Orders; a Final Decision and Order may involve multiple discipline/outcomes.

| Final Decisions and Orders Details/Actions                       | Number     |
|--|------------|
| Reprimand  | 57         |
| Limitation Requiring Education                                   | 39         |
| Limitation Requiring Treatment                                   | 38         |
| Limitation Requiring Reports                                     | 36         |
| Limitation Requiring Drug and/or Alcohol Screens                 | 35         |
| Limitation Restricting Practice                                  | 34         |
| Suspension   | 25         |
| Remedial Education   | 24         |
| Limitation Requiring Mentor/Supervision/Counselor                | 13         |
| Surrender  | 10         |
| Limitation Requiring Assessment                                  | 9          |
| Suspension With Immediate Stay                                   | 8          |
| Revocation   | 6          |
| Limitation – Maintain Compliance with Another State/Agency Order | 3          |
| Suspension (Summary)   | 1          |
| <b>Total</b>   | <b>338</b> |

**Limitation:** Per Wis. Stat. § 440.01(1)(d) means “to impose conditions and requirements upon the holder of the credential, to restrict the scope of the holder’s practice, or both.”

**Reprimand:** Per Wis. Stat. § 440.01(1)(e), means “publicly warn the holder of a credential.”

**Revocation:** Per Wis. Stat. § 440.01(1)(f), means “to completely and absolutely terminate the credential and all rights, privileges and authority previously conferred by the credential.”

**Surrender:** A voluntary relinquishment of a credential as a means of resolving the matter.

**Suspension:** Per Wis. Stat. § 440.01(h) to mean “to completely and absolutely withdraw and withhold for a period of time all rights, privileges and authority previously conferred by the credential.” Licensee may not engage in the practice of the profession during term of suspension.

**Suspension (Summary):** Wis. Admin. Code § SPS 6.01(3) provides that summary suspension may be used when the facts establish “that the respondent has engaged in or is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of the respondent’s license.” If summary suspension issued by Board, a formal complaint must be filed shortly thereafter and the hearing must be held promptly, so it is critical that all evidence is ready, including expert testimony if necessary. The Respondent has the right to a Hearing to Show Cause under the provisions of Wis. Admin. Code § SPS 6.09.

## OTHER ACTIONS TAKEN BY THE BOARD OF NURSING

Data from January 1, 2016 to December 31, 2016

The BON also issues orders subsequent to case closure. These orders include monitoring actions, costs assessed after hearing, dismissals, and review/rehearing denials. Below is a summary of those orders.

| Other Orders/Action Issued                                    | Number     |
|---|------------|
| Granting Full Licensure                                       | 53         |
| Suspension (may include removal of stay)                      | 52         |
| Granting Modification(s)                                      | 35         |
| Denying Modification(s)                                       | 32         |
| Terminating Suspension (may include granting stay)            | 21         |
| Fixing Costs  | 8          |
| Denying Petition for Full Licensure                           | 6          |
| Surrender – Agreement if Reapply Board May Impose Limitations | 5          |
| Limitation Requiring Reports                                  | 4          |
| Limitation Requiring Treatment                                | 3          |
| Limitation Requiring Mentor/Supervision/Counselor             | 2          |
| <b>Total</b>  | <b>221</b> |



## MONITORING

As part of its role in protecting the public, the BON may direct the DLSC to monitor a licensee's compliance with a Final Decision and Order or Order Granting a Limited License.

Monitoring is housed within the DLSC's Administrative Unit, which consists of an advanced paralegal and two regulatory specialists. Active monitoring requires considerable resources and action by monitoring staff to ensure compliance to orders and decisions. Examples of such requirements include recovery of costs, work reports, drug screenings, therapy and education requirements.

Below is a list of the types of disciplines/actions that are monitored:

- **Education**: The licensee is required to take continuing education in a specific topic (could be remedial or disciplinary).
- **Exam**: The licensee is required to take and pass an examination.
- **Impairment**: The licensee is suspended for a period (ordinarily of five years), with the possibility of a stay of suspension that allows the licensee to practice as long as the licensee remains in compliance with the Order. The licensee must undergo random drug screens, attend AA/NA meetings, enter into treatment, submit self-reports, and arrange for therapy reports and work reports.
- **Limitations**: conditions and requirements upon the holder of the credential, or restrict the scope of the holder's practice, or both.
- **Mentor**: The licensee is required to have a professional mentor who provides practice consultations and evaluations as specified by the Order.
- **Reports**: The licensee is required to have reports submitted by a third-party (therapists, supervisor, probation officer etc.).
- **Revocation**: (where costs are assessed): The licensee must return their license to the Department and is prohibited from practice in the State of Wisconsin. If the credential holder reapplies for licensure, the BON may grant the license with or without conditions.
- **Suspension**: A licensee is suspended from practice for a set period of time or indefinitely. Some suspensions may be stayed under specific conditions.
- **Voluntary Surrender**: (where costs are assessed): The licensee surrenders the registration and/or license. The licensee is prohibited from practice in the State of Wisconsin. If the person reapplies for licensure, the BON may grant the license with or without conditions. Some Orders prohibit the licensee from seeking reinstatement/reapplying after surrendering.

As of March, 2017, **590** nurse professionals (Advanced Practice Nurse Prescriber, Registered Nurse, Licensed Practical Nurse, and Nurse – Midwife) are actively being monitored as a result of a disciplinary order.

## PROFESSIONAL ASSISTANCE PROCEDURE (PAP)

PAP is an alternative to the formal disciplinary process for an impaired professional and encourages individuals to seek help for their impairment through a non-disciplinary contract. As of March, 2017, there are **38** nurse professionals (Advanced Practice Nurse Prescriber, Registered Nurse, Licensed Practical Nurse, and Nurse – Midwife) enrolled in the PAP.

If an individual is released from PAP for failure to comply with the voluntary requirements of the program, the BON's PAP Liaison and DLSC's PAP Coordinator may refer the individual to the Board for formal disciplinary procedures, if appropriate.

More information about this unique program designed to both protect the public and assist impaired professionals may be found by reading Wis. Admin. Code ch. SPS 7.

### **Why does the BON consider PAP an important tool?**

- For the majority of chemically dependent professionals, this is an opportunity to seek treatment without losing their professional credentials.
- PAP promotes early identification of chemically dependent professionals and encourages their rehabilitation.
- PAP offers participants an opportunity to obtain treatment for chemical dependency while ensuring that immediate action can be taken should a participant relapse or drop out of treatment. It is important to note that participation in PAP will not exempt the professional from discipline.
- PAP does not provide treatment, but monitors participants' progress in treatment with an approved treatment provider, as well as their random drug and alcohol screens.

## SUMMARY OF KEY STATISTICS

Data from January 1, 2016 to December 31, 2016

- Complaints Received: **764**
- Of the 764 BON complaints received in 2016, 85 complaints have not been screened as of February 27, 2017. Of the **679** already screened, **53%** were closed at screening.
- BON Cases/Respondents Resolved (Closed) – (Cases may have been received in the year 2015 or prior years):
  - ▶ Cases/Respondents **closed formally: 136**
  - ▶ Cases/Respondents **closed after investigation/informal** (without a formal order): **186**  
[**39** of the **186** were **Administrative Warnings**]
  - ▶ Cases/Respondents **closed at screening: 482**
- Most common discipline issued by the BON: **license limitations** and **reprimands**
- Primary sources of complaints: **government agencies, employer/employee/co-worker, state/Nursys Alert, and consumers**
- Nurse professionals currently monitored with disciplinary orders (active) as of **March 2017: 590**
- Nurse professionals currently enrolled in the Professional Assistance Procedure (PAP) as of **March 2017: 38**

