

BOARD OF NURSING

**DIVISION OF LEGAL SERVICES AND COMPLIANCE
ANNUAL REPORT
JANUARY 1, 2020 – DECEMBER 31, 2020**



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 (professional regulations). DLSC is also responsible for the complaint intake process, compliance monitoring (“Monitoring”) and a confidential program for impaired professionals named, Professional Assistance Procedure (PAP). In addition, the division conducts 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 to accomplish these goals. As part of these services, DLSC provides a Nursing Team and other staff comprised of attorneys, consumer complaint program associates, consumer protection investigators, management staff, paralegals, regulatory specialists, and a program policy analyst.

The following briefly summarizes the responsibilities of these positions:

- **Attorneys (Prosecutors)** – Performs 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.
- **Consumer Complaint Program Associates** - Evaluates and reviews incoming complaints and request information; processes the opening and/or closing of cases and monitors complaints in the initial review process. Also performs other administrative and program-related support to DLSC.
- **Consumer Protection Investigators** - Plans, develops, and conducts comprehensive investigations involving compliance with, or violations of, a wide range of statutes, rules, regulations, and/or standards.
- **Management Staff** - Supervises subordinates and manages programs within DLSC.
- **Paralegals** - Performs 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, assist attorneys at hearings, and drafts and prepares a variety of legal documents.
- **Program Policy Analyst Advanced** – Performs comprehensive analysis, planning, development, and implementation related to policies/programs and management. Conducts research, develops project reporting and public information, and provides administrative assistance.
- **Regulatory Specialists (Monitoring and PAP)** – Performs 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/DLSC operates based on a complaint-driven process, meaning most of the compliance and disciplinary actions are the result of complaints submitted by outside sources, rather than DSPS/DLSC's active search for misconduct. The complaint itself may come from a variety of sources, such as consumers, media, and credentialed 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 BON on such matters are the result of information received from DSPS.

Screening

Once a complaint is received, it is routed to an 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 members) as well as a DLSC prosecuting attorney. The BON screening panel brings together the professional expertise of the board with the legal expertise of the DLSC attorney.

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 closeout letter is sent 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 attorney, investigator, and paralegal. At the conclusion of the investigation, DLSC staff will submit findings of the investigation to the case advisor, 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 by 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.

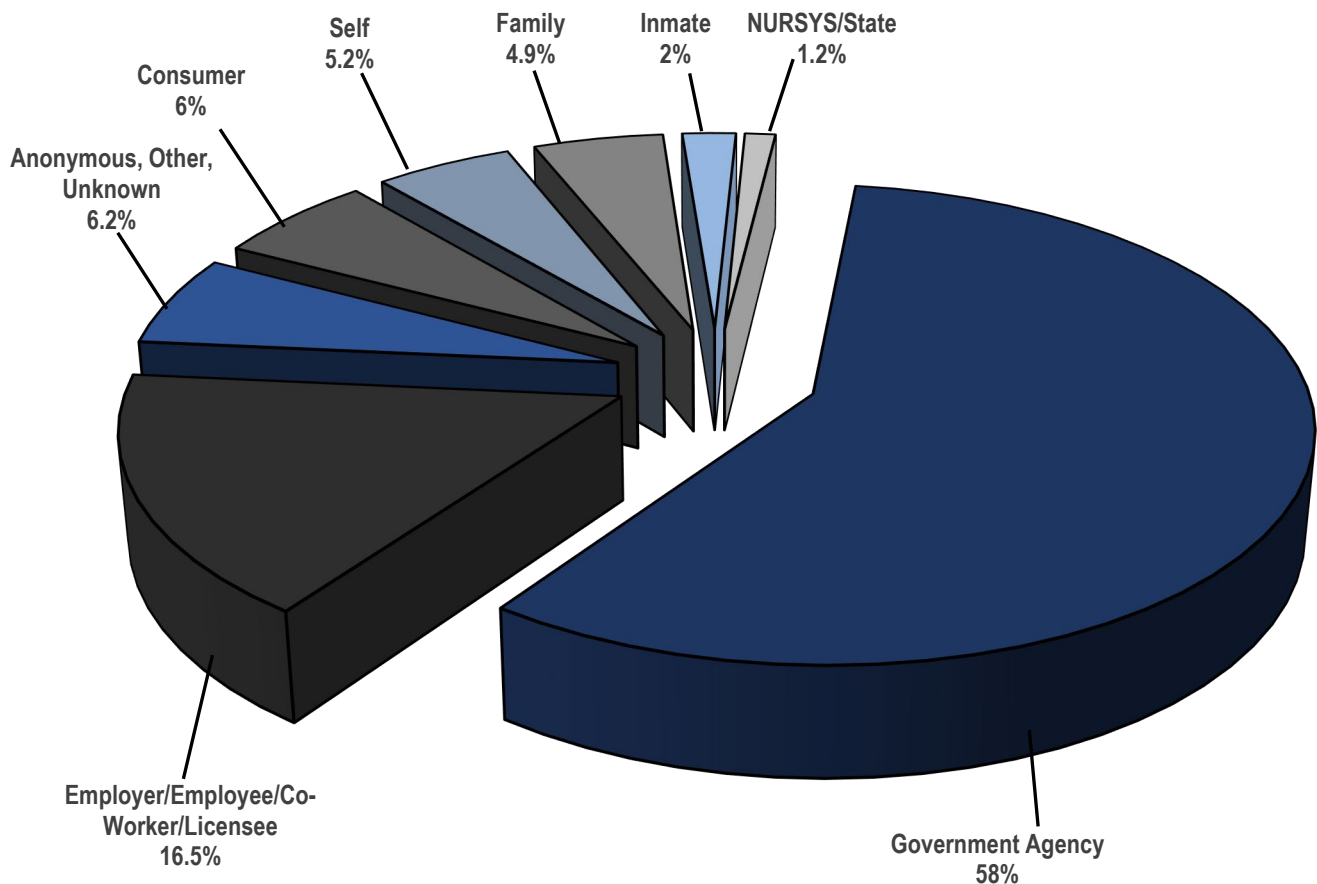
When formal discipline is warranted, the case advisor and DLSC legal staff will determine appropriate discipline and make specific recommendations to the BON for case resolution. Disciplinary action may be agreed to by the respondent in a stipulation, or, if an agreement cannot be reached, discipline 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 credential 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, 2020 to December 31, 2020

The Board of Nursing (BON) received 622 complaints in 2020. 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 2020. 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).



Note:

Government Agency includes: Federal, State (Wisconsin Department of Health Services*, Wisconsin Department of Safety & Professional Services/Board of Nursing/Medical Examining Board), County, Police

NURSYS/State is a database of nurses on the National Council of State Boards of Nursing (NCSBN) registry. NURSYS generates Discipline Speed Memos to each state that has issued a license to all nurses that have been disciplined providing information to the remote states about disciplinary action.

**Wisconsin Department of Health Services – Complaints are received based on a Memorandum of Understanding titled “Notification of Substandard Quality of Care and Referral of Credentialed Caregivers” between Department of Health Services and Department of Safety and Professional Services.*

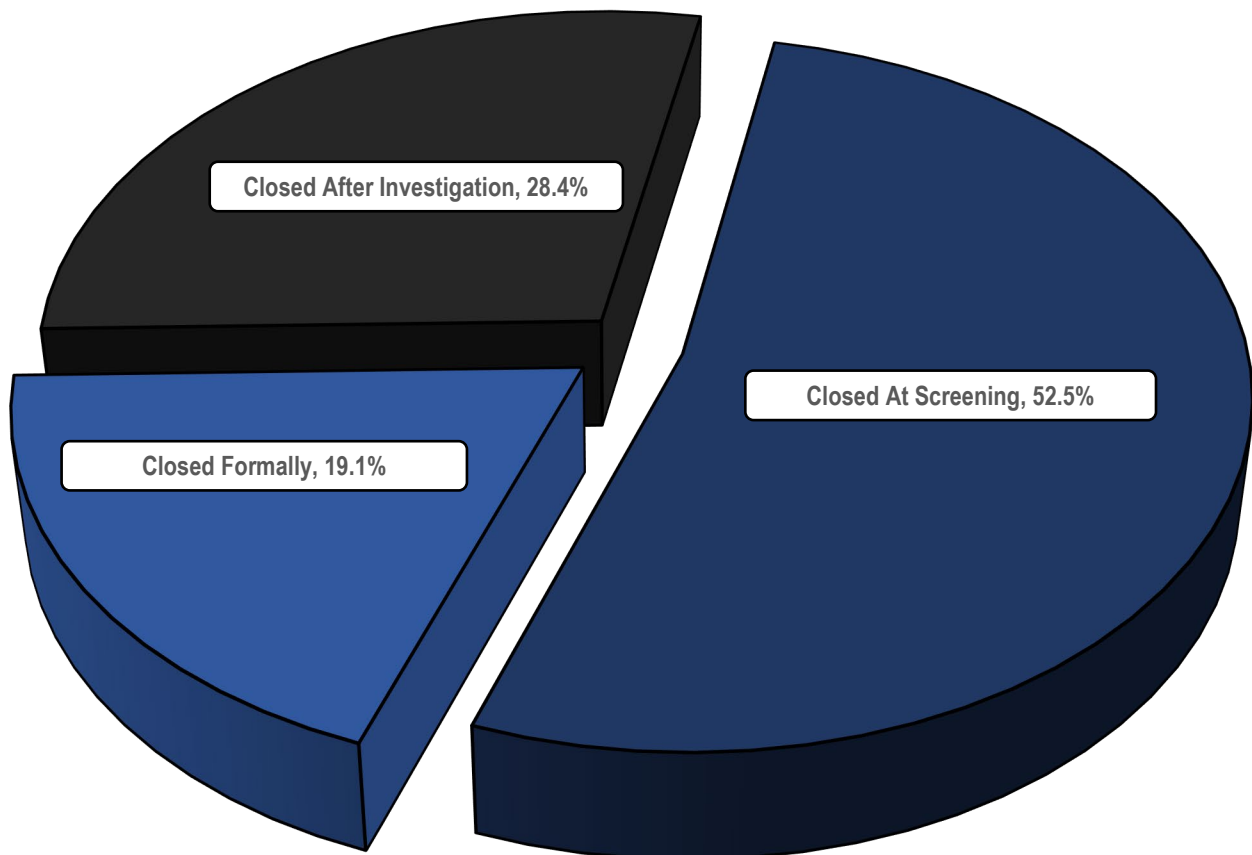
WHEN ARE COMPLAINTS OR CASES (RESPONDENTS) CLOSED?

Data from January 1, 2020 to December 31, 2020

Complaints/cases (respondents) may be closed in the following ways:

- ➔ The prescreening attorney or screening panel determines that an investigation is not warranted.
- ➔ After investigation when the BON case advisor, in conjunction with DLSC professionals, determines that the matter does not warrant professional discipline. Cases (respondents) may close with the following: Prosecutorial Discretion, Administrative Warning, Letter of Education, Lack of Jurisdiction, No Violation, Administrative Closure.
- ➔ After the BON issues a formal disciplinary order. (refer to disciplinary options on page 3)

Note: The following is a graphical representation of how complaints or cases (respondents) were closed in 2020. It is important to note that cases closed in 2020 may have been received in previous years.



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. As of April 2021, [397](#) 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.

The Department Monitor(s) are housed within the DLSC's Administrative Unit, which consists of regulatory specialists. Active monitoring requires considerable resources and action by Department Monitors to ensure compliance to orders and decisions. Examples of such requirements include recovery of costs, work reports, drug screenings, therapy, and education.

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 five years), with the possibility of a stay of suspension that allows the licensee to practice if the licensee remains in compliance with the Order. The licensee must undergo random drug screens, attend AA/NA meetings, enter treatment, submit self-reports, and arrange for therapy and work reports.
- **Limitations:** Conditions and requirements upon the credential holder, or restrictions on 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 (therapist, 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 but must still pay the costs of the proceeding. 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 but must still pay the costs of the proceeding. 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.

PROFESSIONAL ASSISTANCE PROCEDURE (PAP)

PAP is a program for impaired professionals that encourages individuals to seek help for their impairment through a non-disciplinary contract. As of April 2021, there are 33 nurse professionals (Advanced Practice Nurse Prescriber, Registered Nurse, Licensed Practical Nurse, and Nurse – Midwife) enrolled in the PAP.

- *In 2020, 8 (Advanced Practice Nurse Prescriber, Registered Nurse, Licensed Practical Nurse, and Nurse-Midwife) enrolled into PAP.*
- *In 2020, 3 nursing participants were successfully discharged and completed their agreement.*
- *In 2020, the PAP had 1 forced discharge due to non-compliance.*

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 BON 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, 2020 to December 31, 2020

- Complaints Received: **622**
- Of the 622 BON complaints received in 2020, **1** complaint has not been screened as of April 29, 2021 (going to screening panel on 5/6/21). Of the 621 already screened, **58%** were closed at screening.
- BON Cases/Respondents Resolved (Closed) – (Cases may have been received in the year 2020 or prior years):
 - Cases (respondents) closed formally: **207**
 - Cases (respondents) closed after investigation/informally (without a formal order): **307**
[**63** of the **307** were **Administrative Warnings**]
 - Cases (respondents) closed at screening: **567**
- Most common discipline issued by the BON: **license limitations, reprimands, and suspensions.**
- Primary sources of complaints: **Government Agencies, Employer/Employee/Co-worker/Licensee, and Consumers.**
- As of April 2021, **397** nurse professionals are actively being monitored as a result of a disciplinary order.
- As of April 2021, **33** nurse professionals are currently enrolled in the Professional Assistance Procedure (PAP).