



Insights from an Investigator for the Board of Nursing Patty Palmer

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When a nurse is under suspicion, an investigator takes over. Meet a nurse investigator for the Board of Nursing. In this fascinating interview, you'll gain some tips that cover these points:

- ✓ How far an investigator can go to examine a nurse's conduct
- ✓ How a complaint against a nurse gets started
- ✓ Is it possible for a disgruntled coworker to get a nurse in trouble?
- ✓ What questioning techniques used by nurse investigators are particularly effective?

Get all these tips and more.

Pat: This is Pat Iyer with Legal Nurse Podcast, and today we're going to be talking about a topic that I think you'll find fascinating. I brought on the show Patty Palmer, who is a master's prepared registered nurse. She has over 20 years of experience in the healthcare arena and her background includes acute orthopedics, hospice, home health and compliance work. Patty and I were connected through another guest whom I had on the podcast, Filissa Caserta.

Patty has a background doing nurse investigation for the Board of Nursing. And since we get the opportunity to read investigations at times that the Board of Nursing has done on licensed nurses who have come to their attention, I thought it would be fascinating to take a little behind the scenes look at what goes on when a nurse is investigated by the board and what that consists of. And nobody better to talk about this. Welcome to the show, Patty.

Patty: Thank you so much, Pat. It's a pleasure to be here.

Pat: Let's get right into the role, because I'm sure there are people listening who don't know what a nurse investigator does and have never perhaps even seen a report that a Board of Nursing might create. And just for a little international context, when we're talking about the Board of Nursing in the United States, we're talking about the

regulatory agency that manages the licenses of nurses who are permitted to practice?

Patty: Exactly. Yes, that's a great question, Pat. My role as a nurse investigator is that once I receive a complaint, I review that complaint, compile all the players, and then interview those players. Also, I would subpoena any documents that needed to be brought in, be it court documents or if I needed records from a facility. A lot of times hospitals required a subpoena to send those documents over to us. And then I would compile all this information, grab all of the factual information and write a report of investigations. Once that report of investigations was written, then we went to what was called the peer review. So, other investigators would look at it to find little nuances that may need clarifying or something of that nature. And then we would present it to the board.

Pat: So, if I understand you correctly, it sounds like you had the ability to get the documents that you thought were necessary for you to investigate a complaint.

Patty: Yes.

Pat: And just to take a step backwards, where would the complaint originate from?

Patty: A whole host of places. I'm glad you asked that. Sometimes it would be family members that may have thought that a loved one was not cared for properly in a facility or inside of a home. It could be fellow coworkers. We would get reports from other regulatory agencies such as the Office of Healthcare Quality. Sometimes the Division of Fraud would send us reports if there were some improprieties. Sometimes there would even be internal complaints pulled if there was something in a newspaper article that may have cited someone being a nurse that had done something that went against the Nurse Practice Act of Maryland.

Pat: Interesting.

Patty: Yeah, so they could come from anywhere.

Pat: Did you ever get a complaint where coworkers were reporting somebody, and you thought they were just out to get this person, and

it had no merit? When coworkers reported a nurse more often than not was it for a valid reason?

Patty: Oh my. Well, sometimes reports would come in, and being investigators, we had to stay unbiased on anything that came in. We took every investigation or every complaint seriously, but there would be a certain level. Especially when you first start your investigation, you start with the complainant. You would get a feel for where the complaint is coming from within that person.

If it was just a disgruntled employee that was had a beef or something against another employee, that would usually come out in that initial interview because you would make phone contact with that complainant to find out the who, the what, the where, the why, and then also what did they expect the outcome to be. Because sometimes, believe it or not, sometimes people did not want someone to get in trouble, but they just wanted a certain practice to stop.

In those instances, some complaints would be deemed as not having much merit, and it would close out very quickly. Some may have been more egregious that would require a month or two long investigation.

Pat: It wasn't, then, something to be done lightly and out of vindictiveness because it set the wheels in motion, which required the resources of the Board of Nursing to investigate to find out if that complaint had legitimacy.

Patty: Most definitely. And we did take anonymous complaints. So, if we did get an anonymous complaint, sometimes they would be halted before you could get too far along because the complainant did not want their identity disclosed or provide any of the other resources that we would need to compile the information. It's kind of hard to do that, so we would just make sure that we illuminated that in the report immediately.

Pat: And then you said that your report was reviewed by another nurse investigator?

Patty: Yes, we had what's called a peer review, and the peer review helped us to make sure that our reports were reading with accuracy, making sure that there were no unanswered questions. Sometimes when you're into the investigation, and you think you've gone down a certain path,

you may forget to or not even think to ask a certain question or key question that could maybe help illuminate some of the things that are going on. An example would be some of those investigations that were anonymous, or you may have thought they had no merit, but once you go and do that initial search, you find other things and that peer review could help you uncover some of those things.

Pat: What type of background is required for a person to do the kind of work that you're describing?

Patty: Coming into the Board of Nursing as a nurse investigator, they had no specialized requirements coming in. But after one year on the job, you would have to obtain a CLEAR certification. And this is the Council on Licensure, Enforcement and Regulation Training. This is for national certified investigators and inspector training. And this was a certification that that helps you to perfect or it helps hone in on your investigative skills and techniques. After that one year on the job, you would take this training.

Pat: That's interesting. I would have thought that it would be more logical to have you go through the training first and not work for a year. Can you explain the timing of that and what was the reasoning behind that?

Patty: Yes, I think I found it much more beneficial because as a nurse investigator when you're first coming in, you're learning a whole new language. Yes, they do want our nursing expertise because when we're reviewing the medical records, We know what nurses can do or should have done or could have done in that respect As an investigator we're not familiar with a lot of obtaining subpoenas being Notary Publics. That is one other thing I did forget. As a nurse investigator, you would be a Notary Public. Because here in the state of Maryland to administer the oath at the beginning of an interview, which we record, you have to have them solemnly swear or affirm to tell the truth.

The first six months, you're pretty much shadowing someone. You're learning lingo, so you're trying to get a feel for the job. Once you go out and do your first one or two cases, a lot of time has probably elapsed. By that time you will have almost a year in, and you'll be ready for the training because the training doesn't start from the very

beginning and giving you those foundational skills and terminology that you would need to make it through that program. It's a three-day intense program.

Pat: I see. Well, talk us through the process of what happens? You sit down with a nurse. Are you always meeting with them in person or do you do this over the phone?

Patty: Most investigations and the interviews were usually in person. And, like I said, because when you're doing the interview, ours were at the Maryland Board of Nursing, we're always recorded. And that was not only for the protection of the investigator, but also for the protection of the defendant because sometimes things get conveyed or not conveyed correctly. So, when you're making your quote if you have that recording there, then you have something on record that would really help not only your case but help their case too if it's so needed.

When we're meeting face-to-face, the rapport is, I think, a whole lot better as opposed to on the phone. Things that you can see in person give us very good clues: the eye rolling, their eyes and the head or the closing of the eyes, not making eye contact, and this is coming from your defendant or even the interview... the complainant. Sometimes people did give false information and make false complaints. And then when you're face-to-face with them and doing that interview under oath, a lot of times that just can help you get behind the truth as well.

Pat: There's a man at my local National Speakers Association who teaches people (from his police background) how to spot people who are lying. And as I'm thinking about what you're saying, I'm thinking you have to be very astute in reading somebody's body language and reactions when they're speaking. Because that body language could tell a whole different story and the words that are coming out of that person's mouth.

Patty: Yes, ma'am because the sky is green, and I just love all of the purple grass. And so just like that I can say this with a smile on my face or sometimes I've had several cases where a very comfortable silence would bring me so much more information, if I sit back and wait for that interviewee to collect their thoughts and recollect on whatever the case may have been. Sometimes, Pat, these cases weren't actually

given to the investigator, and we weren't able to get to them for at least a year or two.

Sometimes people have forgotten exactly what the occurrences were and what the actual facts of the case may have been. So, we have to give them a chance, too. I've been reading over their information for the last three days. So, by the time I get to them, I have a clear picture in my mind. Sometimes they did not have to come to the Board of Nursing, and sometimes we went out to them. And I got a funny story about that later, but sometimes you just give them that chance to go back in their memory bank to pull forth. Sometimes you can get some key information that may not have even been placed in the reports that they wrote at the time of the incident.

And when you have the conversation, just like we're having a conversation here, I chose to allow that comfortable silence but also to sometimes reiterate what the person has said or rephrase it. I give the cursory nod that yes, I'm understanding what you're saying, giving them eye contact and feedback. And I kept a lot of tissues and water in my office when people did come to me. Because sometimes it can be a very frightening experience for people, especially the defendants that are coming in because this is their livelihood. People get very tearful and anxious. Sometimes we had to take them outside to get some air. We had to stop the interview and, okay, we'll go outside to get some air and let them collect themselves and come back in.

So, and that all built in a lot more trust as opposed to investigators out there that love to or just have an interrogation type style. And we learned about that at the CLEAR training as well that that doesn't bring you as much information and help your investigation as well as a conversational type interview, in my opinion. Sometimes people will feel, "Well, you already feel like this about me," and everyone's on guard and they're very, very tense—as opposed to when you have that relaxed conversation of the cursory head nod of, "Yes, I understand what you're saying. I don't necessarily understand your actions or what it was that had occurred, but I understand what you're saying to me and I'm just trying to make sure that I get the facts. And I want you to be able to have time to bring that out."

Pat: It sounds like that some of the techniques that you used, allowing for silence, which might encourage somebody to volunteer information to

fill in the silence, showing that you are understanding, the tissues and the water, would help people feel more relaxed. Is there anything else that you did to elicit more information from the people you were talking to?

Patty: I let them know from the very beginning my role in as the investigator was not to bring down any type of judgment. My report would only reflect the facts, so I did not have any decision-making powers. When that came into play, and people understood my role as not being one of being able to lay down the judgment, then they tend to relax a lot more than as well. Because when you hear that, "I got to go to the board," even when it was a witness of some sort or maybe some employees it is nerve wracking).

I've gone to a facility and I had to interview maybe first and second shift, and sometimes even third shift employees all in one day. Everyone's nervous and it's like they don't want to really talk. They're scared they're going to get somebody in trouble. But once I brought in those techniques of making people feel more relaxed, sometimes I did uncover other things that we may not have even been there to investigate. So, I would maybe even have to start a whole new complaint on something that I may have uncovered.

Pat: I can imagine the reactions of the people at the facility like, "Oh no, why did I say that now? Now we've got Patty Palmer coming back again."

Patty: "Once more," yeah. And sometimes if I have uncovered a complaint then at the board, they would not normally give that same complaint to me. So, someone else would probably investigate a complaint and then I would be actually interviewed as well as a part of their report of the investigation.

Pat: Knowing that you had somebody who was looking over your shoulder, and probably several people looking over your shoulder, were there any particular techniques that you used when you created your reports?

Patty: Yes, writing the report, stick with the facts. If you stay factual, keep any opinions out of your report, you will do just fine. Because it's hard to dispute facts. So, any opposing lawyer/ attorney that comes in,

when they get you up on that stand at the board, sometimes you do have to defend your report of investigation. They will try to discredit you and tear you down. You need to only stick with the facts and make sure that everything that you've stating in your report is backed up by some type of documentation be it a true test copy of court documents or the actual medical record copies. We've had boxes and boxes of medical records that you have to comb through and then you only use maybe five sheets out of it they ask where the key information was and it's like, "Well, why did you make them? Did you not know what to look for?" "But sometimes it's not necessarily that I did not know what to look for, sir or ma'am, but it was not as evident, and I needed to go and look for it."

So, that's how you keep your reports. If you keep them factual with the documentation to help back up those facts, then that will be your best friend. And that is the best tool that you can have in writing your reports and to keep opinions out of it. As investigators, we have no opinions.

Pat: Just the facts, ma'am.

Patty: Just the facts, ma'am. Exactly.

Pat: I am sure that you've heard some very interesting and creative stories in the process of working on investigations. Is there one particular investigation that stands out in your mind as being memorable?

Patty: Yes. Okay, so I've had quite a few memorable investigations that have gone on because, I mean, we run the gamut. We have seen... what did I say... abuse cases. We've seen fraud cases. We've seen sexual misconduct, impaired nurses. We've had just a whole host of different types of things to go on, but I think the most memorable case was that I investigated was I had to meet an interviewee at a car wash. And I had to go through the car wash as I interviewed him, on tape now, because this interviewee did not feel comfortable coming into the Board of Nursing nor did the interviewee feel comfortable having any board representatives in their home. So, this was the only way to get the interview, so this is what I did.

Pat: Did you have to go through the car wash more than one time?

Patty: Most, definitely and it was so funny. I almost felt like Columbo, if you remember who he is. "Just one more thing" and I would come up with more. As I came up with more questions, the longer we had to sit, so, and that's where that conversation comes in. Sometimes just listening, just as you as an interviewer, you hear me speak on different things and it sparks a question in mind and then we have to kind of go and investigate that question. At least dig a little deeper to find out the answers to those particular questions.

Pat: You had the cleanest car on the block then.

Patty: Yeah, yep. It was so funny because I was in their car. I was in their car. As investigators, we are not allowed to have anyone in our vehicles. Now we could get into a vehicle with someone else, but we cannot have anyone in our vehicles. So, yeah.

Pat: I see. Well, you mentioned some of the reasons that nurses get in trouble with the board and the one that I didn't hear you mention that I'm curious about is comments on social media that nurses make. Could you tell us a little bit about why that has emerged as an issue and what kinds of comments a nurse could make that could result in repercussions?

Patty: Yes, social media is not the friend to nurses or any other healthcare professional, especially if it is known who your employer is. So, if you want to be on social media, it would be best to know your facility or agency's policy regarding your private social media presence. Because if someone knows that you work for a certain agency and you've been out there saying something about a political issue that's going on, a hot topic, or maybe you've posted some compromising pictures of not only yourself but you've posted pictures of patients or of coworkers, then people have the ability at this time now to associate you with that facility or agency. And they're not really happy with that. They being the facilities and agencies because they have repercussions. So, therefore they must put the employee on notice, whatever their policy is.

Now, there are some policies that are very lenient out there and they don't care what their employees say as long as they don't mention the name of their facility. But as a nurse and just in nursing for the nurse practice like here in Maryland, you have an ethical duty, on and off

duty. And if you caught in compromising positions, let's say making threats to people or being in sexual compromising positions, displaying private information from your work** as some people you have seen in hospital beds sleeping. ** ? You can't do that, and you're supposed to be on duty. Things get timestamped, so when there's a timestamp on something and you're supposed to be on duty, so how do you dispute that? So that's just a couple of things that people should be cognizant of.

If there are controversial issues out there, my best advice is to just read them but not respond or reply. Or if you do, then just know whatever your agency or facility's social media policy dictates that you will be held accountable for that even if you're not on duty when you made the response. So, if you're let's say a 7A to 7P nurse and at 10:30 PM you made a derogatory statement about one of your coworkers or one of the management staff on your social media page and it gets back to them, then you could be in trouble. And then if they so desire because you went against their policy and it's an ethical issue, they can bring you to the Board of Nursing.

Pat: One of the people who I coach was involved as an expert witness in a case involving a nurse who took a picture of a patient naked in the shower and posted it on Facebook. And the investigator was able to determine based on the color of the cell phone cover that was visible, that another staff was seen, not the face of the staff was not available, but the body of the staff was available in the picture. And the cell phone was sticking out of the pocket of the uniform of another person present at this incident. So, they got everybody to pull out their cell phones. They could identify who that person was, who was a witness and then got a statement and it turned into a lawsuit and it was settled.

Patty: Yes, and that's I'm so glad you brought that up. You just triggered a memory for me and not necessarily here in Maryland, but I believe it was in New York. It came out in a nurse investigator magazine. But the New York nurse, she was a very new nurse and the patient I believe had been comatose, a younger man, very... I guess they described him as handsome. But anyway, the nurse took pictures of this young man and his private parts. She didn't post it on social media but sent it to a couple of other nurses, and one knew that this was definitely wrong, so she reported it.

And so, she did not get in any trouble, the one that reported it. But the other one that did not report it, I believe she faced a little bit of repercussion, as well as the nurse that did the actual picture taking who lost her license, unfortunately, for such a bad decision. And a lot of young nurses because this is what they're growing up with just having the phones and taking pictures and doing what they want to do with these things, it's not acceptable. And so, yes, that is an ethical thing.

Pat: The last question I had for you before we find out how people can stay in touch with you is do you have any recommendations to give legal nurse consultants who are involved in performing investigations and not necessarily Board of Nursing investigations, but other kinds of investigations?

Patty: Yes, most definitely, Pat. I would say to the legal nurse consultants out here to definitely listen intently to whoever you're interviewing. Give them a chance to say whatever it is that they need to say and ask questions as you go along, conversationally, matter-of-factly. And then also allow them to know that you are hearing what they're saying and if not, you definitely want to ask for clarification. Secondly, you want to make sure to collect all documents that could possibly help your case. And if you have those subpoena powers, subpoena whatever you can and make sure you comb through those documents very well.

The other thing is if you can video or audio tape your interview, that would be a big help to you. Because sometimes when we're listening intently, we try to take a few notes and you write a little bit sideways, but sometimes we miss things in the writing because we're listening so intently. Lastly, I would say you just dig deep. Just keep digging until you have no more questions, that there are no unanswered questions. So, the deeper you dig, and you get to the very end, then that's when you'll have all of your facts.

Pat: There's a magic question that I learned in the last year which is, "Tell me more about that?"

Patty: Yes, most definitely. Yes, I love that. That's a great one.

Pat: And tell our listeners how they can stay connected with you or find out more about what you're doing now? **PLEASE FIX THE REMAINING SECTIONS TO MAKE COLUMNS CORRECT.**

Patty: Fantastic. Sure. You could reach Patty, patty.palmer@alnursingsolutions.com. And you can visit my website please at www.alnursingsolutions.com.

Pat: Perfect. Well, I have learned a lot from listening to you. One of those is that you never know who's in the car wash in front of you or behind you. It could be a nurse investigator questioning a person. That's a nice tip.

Patty: Yes ma'am. Thank you so much, Pat. This has been a blast. I really enjoyed it.

Pat: I think you've given us some great information. I think you've reinforced some of the things that I learned way back in psychiatric nursing that I have taught people when they go through depositions is that if an attorney asks you a question, answer it and then stop. And don't feel uncomfortable with the silence because you just talked about using silence to encourage a person to say more. But when you're an expert witness, you don't want to necessarily say more. You answer the question and stop talking.

Patty: Exactly.

Pat: And be aware of you're being questioned that the person who's questioning you may be using some of the techniques that Patty just explained to us. So, be on your guard, particularly if it is a difficult conversation that you're undergoing,

Patty: That's the time when the silence can, like you said, help the interviewer or hinder the interviewee.

Pat: Yes. And I think it's reassuring to know, Patty, that the complaints are taken seriously, that they are investigated. There is so much concern that I've heard among nurses over the years of, "Well, I don't want to put my license on the line" or "I don't want the Board of Nursing looking over my shoulder." And sometimes those statements have real value because it brings down to the reality of the situation. "Hey, this is a tricky situation. We got to make sure that we're doing the right thing and we're acting as patient advocates and protecting the patient." And to know that a complaint is taken seriously in is

carefully investigated, should be reassuring to the people who worry about getting in trouble with the board and maybe they've done nothing wrong.

Patty: Exactly, and that's where I would try to let my defendants know, "If you've done nothing wrong, just answer these questions and the facts will speak for themselves."

Sometimes things may look on the surface like you have been doing something wrong, but when you dig into the charting. Documentation for nurses is a big topic. I mean we could do a whole talk or just what to document, when to document, how to document. I just saw something on the news this morning and they were talking about it. Waiting until the very end of the day to document, you forget all of those little things that went on at 7:30, 8:00, 9:00 if you're waiting until 7:00 PM to document from 8:00 this morning.

And I had a few cases that the nurses, I had to compliment them because they documented so well. I mean, they painted the picture and I was able to see exactly what happened. And I was able to convey that because of the picture they painted, the nurse had painted, in my report. And sometimes that helps save them.

Pat: Great points, Patty. Thank you for your time. I appreciate that. And thank you to you who's listening to this program. Be sure to come back next week when we have a new interview. Tell other legal nurse consultants about Legal Nurse Podcast. And if you're watching this interview on YouTube, be sure to subscribe to our channel. Thanks so much, and we'll be back next week with a new show.

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