Legal Regulation of Nursing Practice in Ohio

Presented by: Carol Roe JD, MSN, RN

Disclaimers

- While this presentation was prepared by a professional with expertise in the content area, nothing written nor heard should be construed as the rendering of legal advice.

Regulatory Boards
- Enforce law and rules
- Impose penalties through disciplinary process
  - Fines
  - Action on license/certificate

Nursing Associations
- Develop professional standards of practice
- Develop codes of ethics
- Provide service to members

Board Mission Statement

- The mission of the Ohio Board of Nursing is to actively promote and protect the health of the citizens of Ohio through the safe and effective practice of nursing as defined by law.

Nursing Law and Rules in Ohio

“Nurse Practice Act”

ORC 4723

Rules
OAC 4723
Composition of the Ohio Board of Nursing

- 4 licensed practical nurses
- 1 Consumer
- All appointments of Board members are made by the Governor

Composition of the Ohio Board of Nursing

- 13 members
  - 8 registered nurses, one of whom must be either a certified nurse-midwife (CNM), or certified nurse practitioner (CNP), or certified registered nurse anesthetist (CRNA) or clinical nurse specialist (CNS)

Licensees Opportunity to Address the Board

- Open Forum – held every Board meeting
  - Board meets two days every other month January – November
  - Rules Hearing- held in conjunction with every November Board meeting

Role of Employer

- Individual work place issues
- Employer may set additional requirements for position which may be higher than found in law
- Can restrict scope of practice, cannot expand

Limit of Board’s Authority

- Can only take action against those whom regulate (RNs, LPNs, Dialysis technicians, Community health workers, medication aides)
- Cannot take action against employers, but can investigate if a complaint is filed
- Cannot mandate staffing ratios

Legislation and Staffing

- Ratios
- Staffing principles
- Other states
- Ohio – Legislation last session
Meaning of Licensure
- Accountability
- Duty and obligation to perform in a manner that meets minimum standards
- Accountable by virtue of holding a license

Accountability and Liability
- Liability – determination occurs after an untoward event which has caused injury and damages are sustained
- Liability determined in a civil action, a lawsuit for malpractice

Negligence/Malpractice Elements
- Standard of Care
- Duty
- Breach of Duty
- Causation
- Damages

Emerging Issue
- Criminal issues for practice concerns
- Wisconsin nurse- med error
- New York- quitting jobs
- Texas – reporting physician

Reducing Risk
- CANNOT escape accountability
- CAN reduce risk for disciplinary action and malpractice

Be Knowledgeable of Legal Standards Which Control Practice
- Being uninformed does not excuse the individual from accountability
LAW-Nurse Practice Act
Ohio Revised Code 4723.

- Determined by:
  - Ohio General Assembly
  - State Senators and State Representatives
- Access:
  - Board website (www.nursing.ohio.gov)
  - Local library
  - Purchase hard copy from Board

More than Nurses

- ORC 4723 regulates nurses, dialysis technicians, community health workers, medication aides
- How did that happen?

Rules
Ohio Administrative Code 4723.

- Board has authority in law to propose rules which reflect current practice
- Must review each rule at least every 5 years
- Public process
- Access:
  - Same as law

Practice of nursing as a registered nurse

- ORC 4723.01 Definitions
  - (A) "Registered nurse" means.......;
  - (B) "Practice of nursing as a registered nurse" means providing to individuals and groups nursing care requiring specialized knowledge, judgment and skill derived...... Such nursing care includes:
    1. Identifying patterns of human responses......
    2. Executing a nursing regimen......

Practice of RN (con’t)

- (3) Assessing health status......
- (4) Providing health counseling and teaching;
- (5) Administering medications......
- (6) Teaching, administering, supervising, delegating and evaluating nursing practice.

Practice as a Licensed Practical Nurse

- ORC 4723.01(F) “The practice......providing care ....at the direction of a licensed physician, dentist, podiatrist, optometrist, chiropractor, or registered nurse. Such care includes:
  1. Observation, patient teaching....
  2. Contributions to planning, implementation and evaluation
LPN (con’t)

- (3) Administration of medications….
- (4) Administration to an adult of intravenous therapy…..

Scope- RN and LPN

- No differences in terms of setting
- Applies to all
- “At the direction of”
- No exemption for volunteering

Orders

- ORC 4723.01 (B)(5) and (F)(3)
- From physicians
- From APNs
- From PA’s (ORC 4730)
- Duty to question orders –OAC 4723-4-03 (E) and (F)

ORC 4723.43

Scope of Practice- CNM, CRNA, CNP, and CNS

- (A) certified nurse-midwife
- (B) certified registered nurse anesthetist
- (C) certified nurse practitioner
- (D) clinical nurse specialist

ORC 4723.431 to .485

- Standard care arrangement for CNM, CNP, CNS
  - Requirements

  List of approved certifying organizations

ORC 4723.49- 50

- Prescriptive authority sections for APNs
- Establishment of formulary

- Requirements for approval of pharmacology courses
Dialysis Technicians-ORC 4723.72
- Perform and monitor dialysis procedures
- Draw blood
- Administer lidocaine, IV heparin, IV saline and dialysate
- Delegated by RN or MD

Community Health Workers-ORC 4723.81
- Only RN may supervise when delegating care
- Provide care in accordance with rules adopted under ORC 4723.88
- Apply for certificate from OBN
- May be disciplined by OBN

Medication Aide- ORC 4723.62
- Medication Aide Advisory Council
- Makes recommendations regarding design and operation of pilot program, curriculum, issues relevant to use of medication aides in nursing homes and residential care facilities.

ORC 4723.28- Disciplinary Provisions
- Spells out various infractions which could lead to disciplinary action
- Outlines “due process” all holders of licenses and/or certificates i.e., Board does not “snatch” license without individual’s knowledge
- Range of options in terms of discipline

Alternatives to Discipline
ORC 4723.282- Practice Intervention and Improvement program
- For practice deficiencies which are amenable to remediation

ORC 4723.35- Alternative Program for Chemical Dependency

Mandatory Reporting
- ORC 4723.34
- Employers must report any conduct which is grounds for disciplinary action by Board even if the employer does not take action
- Peer assistance programs
- Prosecutors
Protection against Retaliatory Action

- ORC 4723.33 added in 2000
- Added at the behest of the Ohio Nurses Association
- Reinforces protection against retaliatory action provided by sections 4113.51 to 4113.53 of the Revised Code (whistle-blower provisions)

ORC 4723.71-79

- Dialysis technicians
- Delegation by physician or registered nurse.
- Supervision requires immediate presence
- Medications limited

ORC 4723.61-.69

- Medication Aides
- Delegation of RN or LPN
- May administer oral; topical; eye, ear, or nose; rectal/vaginal meds; PRN if nursing assessment completed.
- Shall not: schedule II; dosage calculations; injection, IV, splitting pills.

ORC 4723.81-.88

- Certification of community health workers
- Advocate for individuals and groups in the community
- Delegated by registered nurse
- No medication administration

Selected portions of Administrative Rules

- OAC 4-Standards of Practice Relative to RN or LPN
- 4723-4-03 Competent practice as RN
  - Demonstrate competence
  - Implement orders unless inaccurate, not properly authorized, not current or valid, harmful to pt., contraindicated.

Rules (con’t)

- OAC 4723-4-03
  - Process for clarifying orders
  - Patient confidentiality
  - When providing direction to LPN, RN shall first assess: condition of client, type of care required, complexity of care, training and skill of LPN, availability of resources.
OAC 4723-4-04
- Standards relating to competent practice as LPN
- Some are same as RN such as maintain competency, clarification of orders, patient confidentiality,

OAC 4723-4-05
- Standards for APNs
- Function within scope
- Evaluation provided by collaborating physician, podiatrist or nurse holding valid COA.
- Provide care within specialty when have education from a recognized body of knowledge, demonstrate KSA, maintain documentation.

OAC 4723-8
- Specific to APNs
- Standard care arrangement for CNM, CNP, CNS
- Quality Assurance standards
  - Periodic random chart audit
  - Conference subsequent to chart review
  - Plan to utilize chart review to improve care
  - Client evaluation of care

OAC 4723-13
- Delegation of Nursing Tasks
- No delegation of medication administration other than exceptions in law
- No delegation of nursing process

OAC 4723-23
- Dialysis Technicians
- Obtaining certificates
- Approval of training programs
- Requirements of training programs
- Approval of testing organizations
- Standards for safe dialysis care

OAC 4723-27 Medication Aides
- Oral, topical, nasal spray, or as drops, or ointment, rectal and vaginal meds, inhalants in single dose
- No schedule II, meds requiring dosage calculations, non-approved drugs, clinical research, oxygen
### Medication Aides (cont)
- No injections, IV, splitting pills, through jejunostomy, gastrostomy, nasogastric, or oral gastric tubes
- No receive, transcribe or alter med order
- No initial dose
- Must be delegated by nurse

### OAC 4723-14
- Continuing Education Rules
- CE requirements for renewal
- Proof of completion
- Approval as an OBN approver