

Legal Regulation of Nursing Practice in Ohio

Carol Roe, JD, MSN, RN
in cooperation with
Lakeshore Educational & Counseling Services, Inc.
www.LakeshoreSupport.com

Objectives

- Differentiate between professional and legal influences
- Review selected portions of Ohio law specific to legal role
- Discuss selected trends and issues which impact practice

Disclaimer

- While this presentation was prepared by a professional with expertise in content area, nothing written or heard should be construed as the rendering of legal advice.
- Disclosures not applicable

Professional Influences of Nursing Associations

- Professional definition of practice- ANA. 2003. Nursing's Social Policy Statement. Washington,DC. Author
- Standards of Practice- Competent level of practice based on nursing assessment.

Professional Influences (con't)

- Standards of Professional Performance-Leadership, Collegueship, Ethics
- Source: ANA, 2004, Scope and Standards of Practice. Washington, DC:Author

Code of Ethics

- Nurse promotes, advocates.....
- Nurse participates in establishing health care environments....conductive to quality health care....
- Nurse collaborates to meet.... needs
- Profession ...responsible for shaping ..social policy...
- ANA, 2015.Code of Ethics. Wash.DC

Ethics and Law

- Sense of right/wrong, morals
- Rules to govern society
- Area of study
- Determined by legislative body
- Professions develop codes to provide guidance
- Enforced by governmental entity

Discrepancies between Ethics and Law

- Differences exist between ethical points of view
- Law may not motivate behavior but judge after action
- Ethics change more slowly than law

Regulatory Professional Board Association

- Governmental
- Non-governmental
- Mandatory fees to practice
- Voluntary membership dues
- Protect the public
- Protect the public *and protect and advance the profession*

Regulatory Professional Board Association

- Develop minimum standards and enforce law
- Develop professional standards of practice
- Impose penalties through disciplinary process
- Develop professional codes of ethics
- Fines, action on license/certificate
- Provide service to members

Nursing Law and Rules in Ohio

- "Nurse Practice Act"
- Law- Ohio Revised Code (ORC) 4723
- Rules- Ohio Administrative Code (OAC) 4723
- www.nursing.ohio.gov
- www.ohio.gov

Composition of Board

- ORC 4723.04
- 4 LPN's
- 1 consumer
- 8 RN's with at least 2 APRN
- Appointed by Governor

Role of Employer

- Individual work place issues
- May set additional requirements higher than law
- May restrict scope of practice, cannot expand
- At will employment

Board's Authority

- Can only take action with those Board regulates
- Minor infractions
- Investigate based on complaints
- Cannot mandate staffing ratios

Licensure

- Policy decision made by state under police powers
- Scope of practice
- Educational standards
- Grounds for discipline
- Process of discipline
- Enforcement entity

Licensure

- Accountability
- Duty and obligation to perform in a manner that meets minimum standards
- Accountable by virtue of having a license

Accountability and Liability

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

Negligence/Malpractice Elements

- Standard of care
- Duty
- Breach
- Causation

Risk Reduction

- Cannot escape accountability
- Decrease risk potential by knowing law, following policies and procedures, maintaining competency, evaluating own practice based upon professional standards

ORC 4723

- Regulates more than nurses
- Determined by Ohio General Assembly
- Elected state representatives and senators
- Access on Board of Nursing website

Practice as RN ORC 4723.01

- (B) "Practice of nursing as registered nurse" means providing to individuals and groups care requiring specialized knowledge, judgment, and skill derived from.....such nursing care includes: (1) identifying patterns of human responses.....

Practice as RN (con't)

- (2) Executing nursing regimen....
- (3) Assessing health status....
- (4) Providing health counseling and teaching....
- (5) Administering medications and treatments authorized by.....
- (6) Teaching, administering, supervising, delegating

Practice as LPN ORC 4723.02(F)

-providing to individuals and groups ..care requiring application of basic knowledge....at the direction of a licensed physician, dentist, podiatrist, optometrist or registered nurse....includes (2) contributions to the planning, implementation, and evaluating of nursing;

Scope- RN and LPN

- No difference in terms of setting
- Applies to all including APRNs
- At the direction of

Scope APRNs ORC 4723.43

- (A) Certified Nurse Midwife
- (B) Certified Registered Nurse Anesthetist
- (C) Certified Nurse Practitioner
- (D) Clinical Nurse Specialist

APRN (effective 4/17)

- Eliminates Certificate of Authority (COA) and Certificate to Prescribe (CPT)
- CNP, CNM, CNS all have prescriptive
- Must take 45 hour pharm course and provide documentation by Dec. 31, 2017

APRN's (con't) ORC 4723.492 and .50

- Prescriptive authority sections
- Establishment of exclusionary formulary (new)
- Requirements for approval of pharmacology courses

APRN's (con't) 4723.431

- Standard care arrangements for all but CRNA's (new- Mental Health no longer excluded)
- Collaborating physician
- List of approved certifying organizations

Others regulated by Board

- ORC 4723.72 – Dialysis Technicians
- ORC 4723.81 – Community Health Workers
- ORC 4723.61 – Medication Aides

Disciplinary Provisions ORC 4723.28

- Spells out various infractions
- Outlines "due process" for all certificate/license holders
- Range of options for discipline

Alternatives to Discipline

- ORC 4723.282 – Practice Intervention and Improvement Program
- ORC 4723.35 – Alternative Program for Chemical Dependency

OAC 4723

- Rules are promulgated by Board as one of powers under the law
- Hearing process by Board
- Each rule to be reviewed at least once every 5 years

Orders

- ORC 4723.02 (B)(5) and (F)(3)
- From physicians
- APRNs and PA's
- Duty to question- OAC 4723-4-03(E) and (F)

Selected OAC sections

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

OAC (con't)

- Process for clarifying orders
- Patient confidentiality
- When providing direction to LPN, RN 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 relative to competent LPN practice
- Many same as RN

OAC 4723-13

- Delegation of nursing tasks
- No delegation of nursing process

Other Selected Sections

- OAC 4723-14 Continuing Education
- OAC 4723-23 Dialysis Technicians
- OAC 4723-27 Medication Aides

Risks of Social Networking

- ANA's Principles for Social Networking and the Nurse, (2011).
- www.nursingworld.org

Social Media: Implications for Nurses

www.ohnurses.org

Social Networking

- A Nurse's Guide to the Use of Social Media, 2011.
- National Council of State Board's of Nursing (NCSBN)
- www.ncsbn.org

Relevant ORC sections

- 4723.28(31) – failure to establish and maintain professional boundaries
- 4723.28(32) – engaging in
 - Sexual contact
 - Sexually demeaning behavior

Relevant OAC Sections

- 4723-4-06(L) not misappropriate property or:
 - Seek personal gain
 - Behavior interpreted as such
 - Inappropriate involvement
 - Behavior interpreted as such
 - Client cannot consent

Relevant OAC sections

- **4723-4-06(I)** – delineate, establish, and maintain professional boundaries
- **4723-4-06(K)** – shall not:
 - Cause physical, verbal, mental, or emotional abuse
 - Any behaviors construed as such

OAC Section

- **4723-4-08(Q)**
- For purposes of (I), (J), (K), (L), (M), a nurse shall not use social media, texting, emailing or other forms of communication with, or about a patient, for non-health care purposes other than fulfilling assigned job responsibilities.

Emerging Professional Issues

- **Nursing's Agenda for Health Care Reform**
 - Access, quality, funding, adequate work force

Source:

www.nursingworld.org/healthcareand policy issues/health system reform

Affordable Care Act

IOM Studies/Recommendations

- 1999- Health Care Disparities
- 1999- To Err is Human
- 2001- Informing the Future: Critical Issues
- 2001- Crossing the Quality Chasm
- 2001- Enhancing Diversity in Health Professions
- www.nationalacademies.org

Future of Nursing

- **Nurses crucial in changing health care system**
- **Nursing work force better prepared**
- **Nurses practice to educational level they are prepared for**
- **Need more nurses on boards**

Malpractice Insurance

- Factors to consider
- "Deep Pockets"
- Claims Made/Occurrence

Emerging Regulatory-eNLC

- Enhanced Nurse Licensure Compact
- Arizona, Arkansas, Delaware, Florida, Georgia, Idaho, Iowa, Kentucky, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wyoming

eNLC

- RNs and LPN/VNs
- Allows mobility across state borders
- APRN Compact
 - May, 2015
 - Will be implemented when 10 states have enacted legislation
 - Idaho, North Dakota, Wyoming pending in 2017