Reporting Violations of the Nurse Practice Act

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The mission of the Ohio Board of Nursing is to actively safeguard the health of the public through the effective regulation of nursing care.
Mandatory Reporting: Topics for Discussion

- Who is mandated to report to OBN any issue with a nurse?
- Confidentiality
- Whistleblower protection
- What should be reported?
Who Must Report?

- A person or governmental entity that employs, or contracts directly or through another person or governmental entity for the provision of services by, registered nurses, licensed practical nurses, dialysis technicians, medication aides, or certified community health workers and that knows or has reason to believe that a current or former employee or person providing services under a contract who holds a license or certificate issued under this chapter engaged in conduct that would be grounds for disciplinary action by the board of nursing under this chapter or rules adopted under it shall report to the board of nursing the name of such current or former employee or person providing services under a contract.

- The report shall be made by an individual licensed by the board who the person or governmental entity has designated to make such reports. “Employer”: must comply with law by acting through designated employees in reporting (e.g., Clinical Nurse Manager)
Confidentiality

• Section 4723.28(I)(1), ORC: “All of the following apply under this chapter with respect to the confidentiality of information:

• (1) Information received by the board pursuant to a complaint or an investigation is **confidential and not subject to discovery in any civil action**, except that the board may disclose information to law enforcement officers and government entities for purposes of an investigation of either a licensed health care professional, including a registered nurse, licensed practical nurse, or dialysis technician, or a person who may have engaged in the unauthorized practice of nursing or dialysis care. . .

• (2) If an investigation requires a review of patient records, **the investigation and proceeding shall be conducted in such a manner as to protect patient confidentiality.**”
Whistleblower Protection

• Section 4723.33, ORC: Protection against retaliatory action.

• “A registered nurse, licensed practical nurse, dialysis technician, community health worker, or medication aide who in good faith makes a report under this chapter or any other provision of the Revised Code regarding a violation of this chapter or any other provision of the Revised Code, or participates in any investigation, administrative proceeding, or judicial proceeding resulting from the report, has the full protection against retaliatory action provided by sections 4113.51 to 4113.53 of the Revised Code.”
What Should be Reported?
What should be reported?

- “Conduct that would be grounds for disciplinary action” – 4723.34, ORC
- Immunity for reports made “in good faith” – 4723.33, ORC
- Board of Nursing will review the conduct
- “Minor violations” will be closed if Board determines public is adequately protected – 4723.061, ORC
Nurse Practice Act: Violations that are grounds for disciplinary action

- Ohio Revised Code Section 4723.28
- Legislative branch identified violations in statute in order to protect public – The Law – The Ohio Revised Code
- Executive branch – Board of Nursing - enforces statute to protect public – The Rules used to clarify the Law– Ohio Administrative Code
VULNERABLE POPULATIONS
Theft Related Offenses

- 4723.28(B)(4), (B)(5): Criminal Theft (e.g., passing bad checks, misuse of credit cards, forgery, Medicaid Fraud, Insurance Fraud, Receiving Stolen Property).
- 4723.28(B)(13): “Misappropriation or attempted misappropriation of money or anything of value in the course of practice; ”
- 4723.28 (B)(31) & Rule 4723-4-06 (L): Boundaries Violations.
Criminal Theft

- Employer sources of information:
- Employment application or background check (reveals conviction, guilty plea, “intervention in lieu of conviction”)
- Newspaper articles
- Self-report
- “Rumors”
Non-Criminal or Pre-Criminal: Taking “Anything of Value”
Case Examples: “Anything of Value”

- **Case #1: Supplies.** RN working nightshift is observed, on surveillance video, in hospital supply room taking boxes of adult chucks and briefs out of supply room to trunk of her car in parking lot.

- **Case #2: Drugs.** ER nurse asked to witness waste for Nurse Doe. Doe is floating from another unit. Doe states clear fluid in syringe is Dilaudid. Later ER nurse observes Doe place syringes in pocket. Upon investigation by supervisor and security, multiple syringes with Dilaudid recovered from Does’ locker.

- **Case #3: Money.** Nurse Smith works per diem and is typically scheduled on various units depending on need. Smith submits timesheets over period of two months for four different units. ICU step-down supervisor notices that for time submitted on 1/5/10, time sheet indicating 4.0 hours does not match patient assignment sheet. Upon investigation, security determines that Smith submitted timesheets for over 80 hours that Smith had not worked. Smith admits he was attending classes to further his education during these time periods and was not actually in the building at those times.
SEEKING TO OBTAIN GAIN AT THE CLIENT’S EXPENSE: PROFESSIONAL BOUNDARIES
• 4723.28 (B)(31), ORC & 4723-4-06, OAC: Rule violations related to “taking” from a patient:
• “A licensed nurse shall not misappropriate a patient’s property or: (1) engage in behavior to seek or obtain personal gain at the patient’s expense; (2) engage in behavior that may reasonably be interpreted as behavior to seek or obtain personal gain at the patient’s expense.”
• How does this differ from 4723.28 (B)(13): “Misappropriation or attempted misappropriation of money or anything of value in the course of practice”? 
• **Case examples:** “Seek or obtain personal gain at the client’s expense”

• **Case #1: POA:** Patient #1 is a 73 year old gentlemen with a history of bipolar disorder and stroke. He becomes agitated at times and has been frequently admitted to the hospital psychiatric unit. Patient #1 is a widower and has become close to Nurse Brian, who reminds him of a son who lives in California. Patient #1 asks Brian to be his POA so Brian can attend the real estate closing on the Patient’s residence. Brian thinks this would be okay because it would certainly not benefit Brian to do this favor for Patient #1.
Case #2: Adoption. Nurse C, RN had been employed as an obstetrical nurse at a hospital for ten years. Patient #2 was admitted to Nurse C’s unit when she delivered an infant. Patient #2 was an unmarried 19 year-old and had selected a potential family to adopt her infant. After meeting the potential adoptive family, Patient #2 advised Nurse C that she did not want to give her infant to the family because of the poor health status of the potential father. Patient #2 and Nurse C engaged in a conversation regarding the agency Nurse C had used when she adopted her own children and Nurse C disclosed the name of the agency to Patient #2. During the conversation, Patient #2 asked Nurse C if she would adopt her baby. Nurse C gave the information to Patient #2. Patient #2 was transferred to another unit and Nurse C visited her after the nurse had clocked out for the day. Patient #2 had already contacted Nurse C’s adoption agency. Patient #2 was discharged the following day. Prior to her discharge, social services staff did not have an opportunity to meet with Patient #2, which was contrary to hospital policy. Nurse C via the agency proceeded to adopt Patient #2’s baby.
Impairment

• **May be Cognitive/Neurological/Physical or Mental**: Section 4723.28(B)(11): Impairment of ability to practice according to acceptable and prevailing standards of safe nursing care because of a physical or mental disability

• **May be Related to Alcohol or Chemical Use**: Section 4723.28(B)(9), (B)(10): Impairment of ability to practice . . . Due to habitual or excessive use of controlled substances, other habit-forming drugs, alcohol, or other chemical substances

• **Documentation and Witness Statements are Important**: “While working at aprox. 2:30 pm in the ER on 1/5/10, Nurse Doe was observed by the Staff members X, Y, and Z (see attachment statements) with slurred speech, pinpoint pupils, staggering, sleeping at the nurse’s desk. . .”
Self-Administration of Dangerous Drugs

- 4723.28(B)(8): Self-administration of any or dangerous or illegal drug without a legal, valid prescription.
- Urine screens (for cause or random)
- Board will ask for a “certified” copy
Again, Vulnerable Populations
PRACTICE VIOLATIONS

• Chapter 4723-4, OAC: Standards of Practice
• 4723-4-03 Standards for RN
• 4723-4-04 Standards for LPN
• 4723-4-05 Standards for APN
• 4723-4-06 Patient Safety Standards – Applies to all nurses
Safety Standards

• 4723-4-06:
• (E) Complete, accurate and timely documentation of assessments, observations, care provided and patient’s response
• (F) Report errors or deviations from orders to appropriate practitioner
• (G) Nurse shall not falsify any patient care record or any time & billing records
• (H) Nurse shall implement measures to promote a safe environment for each patient
Professional Boundaries, Abuse and Patient Confidentiality

- 4723-4-06 (I), (J), (K), (L), M); 4723-4-04 and 4723-4-04 (H), OAC

  - Maintaining boundaries is part of patient safety
  - As discussed above, boundaries violations may involve obtaining “anything of value” at a patient’s expense, but also include, for example: (a) inappropriate involvement in a patient’s personal or financial affairs; (b) conduct that may reasonably be interpreted as seductive or sexually demeaning.
  - Abusive behavior is not limited to physical abuse but includes verbal, mental or emotional abuse
  - Patients are required to be accorded privacy and treated with courtesy, respect, and full recognition of dignity and individuality
  - Confidentiality of patient information is part competent practice
SOCIAL MEDIA

Be aware that social media can be used to cross patient boundaries. “A nurse shall not use social media, texting, emailing, or other forms of communication with, or about a patient, for non-health care purposes of for purposes other than fulfilling the nurse’s assigned job responsibilities.” Rule 4723-4-06 (Q), OAC.

Examples:

- Nurse posts on her Facebook page: “Had a real whiner in ER last night, 30 year old lady came in with Cellulitis and tried to get Oxycontin . . . I’ve seen her at my son’s preschool before . . .”
- Nurse texts patient: “Hello! Can I get your cell number . . . want to meet for coffee at Panera’s tomorrow after you get discharged? Just casual, I’m buying!”
- Nurse who is listing her 1974 Mustang for sale sends emails to patient’s account with photos of Mustang, “Hey – thought you might be interested.”

✧Remember: The Patient is deemed incapable of consenting to a boundaries violation! See 4723-4-06(L), OAC.
Scope of Practice Violations

- 4723.01 (B) and (F), ORC: definition of scope of practice for RN and LPN
- 4723-4-03, 4723-4-04: standards of practice for RN and LPN

Practice Violation Example: How many violations can you identify? Nurse Smith receives a verbal order for the administration of morphine 2mg IV prn for break-through pain every 4 hours, for patient #3, an elderly and non-communicative patient. Nurse Smith administers 2mg at 2pm and 6pm, but is busy and does not document the order or the administration. Nurse Smith observes patient #3 is grimacing and appears in pain at 7 pm, and “knows Dr. Jones” would order more frequent administration of morphine, so Nurse Smith pro-actively administers 2mg at 7:15 pm. At 7:20 pm, Nurse Smith borrows a quarter from patient #3’s bedstand so Nurse Smith will have enough change to buy a Coke in the vending machine on the way home. Nurse Smith clocks out at 7:30 pm, and on the way out, relates to the young man outside the patient’s room that “your grandmother is comfortable and should make it through the night – it’s okay to go home.” In returning the next morning at 7:30 am, Nurse Smith documents her observations and actions from the prior evening. Nurse Smith enters patient #3’s room to assess the patient and immediately observes the patient does not appear to be breathing. Patient #3 has no vital signs. Nurse Smith goes to the nurse’s desk to report that the patient “has passed,” and initiates calls to family members to advise them of this.
What should be reported to the Board of Nursing?

• Again,

• “Conduct that would be grounds for disciplinary action” – 4723.34, ORC

• Immunity for reports made “in good faith” – 4723.33, ORC

• Board of Nursing will review the conduct

• “Minor violations” will be closed if Board determines public is adequately protected – 4723.061, ORC
Thank you for your attention!