



Janet Napolitano
Governor

Joey Ridenour
Executive Director

Arizona State Board of Nursing

NURSE PRACTICE ACT STEERING COMMITTEE

MINUTES

OCTOBER 18, 2007

MEMBERS PRESENT:

Joyce Benjamin, RN
Kathryn L. Busby, JD
Theresa Crawley, RN CRNA
Mary Griffith, RN
Gregory Harris, JD
Rory Hays, RN
Kathy A. Scott, RN
Mardy Taylor, RN

BOARD STAFF ATTENDING:

Joey Ridenour, Executive Director
Pam Randolph, Associate Director, Education

MEMBERS ABSENT:

Anne McNamara, PhD RN
Steve Myers

GUESTS PRESENT:

Brandon Coakley
Sandy Klinikowski, Asst. CNO
Rodney Moffett, CRNA
Cheryl Roat, RN MSN
Mary Wojnakowski, PhD, CRNA

I. CALL TO ORDER/INTRODUCTIONS/APPROVAL MINUTES

Ridenour called the meeting to order at 9:11 a.m. and welcomed members of the committee.

II. REVIEW/APPROVE MINUTES OF SEPTEMBER 27, 2007

Busby moved and Crawley seconded to approve the Nurse Practice Act Steering Committee meeting minutes for September 27, 2007 without correction. The motion carried.

III. REVIEW OF FERPA, COURTCASES RELATED TO FERPA & BOARD MEMBER STATUTORY REQUIREMENTS

Randolph addressed the committee stating that the FERPA cases reviewed were very interesting. Randolph noted that the Supreme Court stated that FERPA does not actually confer the right for a student to sue based on a FERPA violation. FERPA has a penalty for the school if there is a pattern of violation of FERPA. Penalties may include not receiving federal funding.

Randolph, in response to Committee request, took the questions regarding FERPA to the Statewide Educators meeting to ascertain the opinion of educators regarding either jurisdiction over students or how institutions deal with FERPA. The consensus was that perhaps Board did not need to take jurisdiction over students. Some institutions are requesting students waive their rights or considering having students sign a waiver to transmit academic records.

Randolph stated that the changes that may be considered would be to require applicants to allow records to be transmitted to the Board of Nursing. Members raised concern with regard to applicants being denied enrollment based on their not signing a waiver. Harris offered that while Committee members understood that the Board may need to have access, that level of access seems broader than necessary. With such a broad waiver, schools may feel they must turnover more records than necessary. Members expressed discomfort with the Board conditioning applications based on a waiver.

Randolph maintained that this policy would pertain to only those students that the Board had information were perceived as a danger. Unless the school has a legal mechanism for informing the Board that there is an issue, the Board would not know. The Board cannot obtain academic records through other means. Nursing program representatives have stated that they cannot file complaints against students with the Board so that a subpoena for records may be issued because of FERPA. Programs are unable to ascertain whether or not students have been to other schools and are ineligible to return due to potential violations of FERPA. Some institutions have policies in place that allow disciplinary action based on certain violations of the institution's policies and procedures, but this does not prevent students from enrolling in another program with the same underlying concerns.

Members felt that as part of the enrollment process, it would be appropriate for a transfer student to have not only transcripts, but an affidavit of good standing from the former school. Members also felt that as part of acceptance of a new program, the Board must ensure the program has appropriate policies and procedures that would address this issue. The matter can be addressed in rulemaking. A legislative route may jeopardize other issues.

IV. REVIEW DRAFT 2: DISCUSSION OF BARRIERS/CHANGES NEEDED TO NURSE PRACTICE ACT & POTENTIAL EVIDENCE TO SUPPORT REVISIONS

Randolph organized suggested changes into substantive and technical items. Committee members reviewed and discussed suggested statutory changes.

32-1601 Definitions

Wojnakowski on behalf of the Arizona Association of Nurse Anesthetists offered proposed language for Certified Registered Nurse Anesthetist and documentation indicating that the council on Accreditation of Nurse Anesthesia Educational Programs is a nationally recognized accrediting body for nurse anesthesia programs and the Council on Certification of Nurse Anesthetists is also a nationally accrediting body. The certified

registered nurse anesthetists do not have any objection to not being included in advanced practice but will review how the term is used. Members suggested including the statement “or a similar body recognized by the US Department of Education” to avoid leaving out the names of other regulatory bodies or should any regulatory body listed change its name.

Rory Hays conducted research and offered a definition for moral turpitude. Hays stated that typically moral turpitude is known to be behavior that shocks ones conscience. The definition should be tied to public safety and risk and the knowledge that these are professional people caring for vulnerable populations. Hays offered the following: “behavior abhorrent to community and ethical standards of the nursing profession.” Members felt that the term moral turpitude should remain and add other behaviors.

Members discussed being specific with delegation of medication administration. Not changing it allows for matters to be addressed through rule rather than statute. Hays recommended the item be reviewed by school nurses because there are many instances where the school principle is delegating rather than the school nurse who is overseeing multiple locations. This matter will be addressed next year.

Limited license as non discipline was discussed at the last meeting. Randolph distributed page 191 from the model rules from National Council of State Boards of Nursing that discusses modified license for an individual who met licensure requirements and who was able to practice without compromised public safety within a modified scope of practice or with accommodations or both as specified by the Board. Members asked that the circumstances that for which the license would be modified be clarified. Nurses with physical inability may still be able to teach, triage, and conduct telephone nursing. Members expressed concern regarding limited licenses and cognitive ability, and noted that the Board in determining and/or evaluating cognitive ability may create the risk of putting the Board in a situation to have to protect its position in an employment setting rather than a position of protecting the public. Members requested further specificity in the language. The Board has been dealing with these matters on a case-by-case basis. The Board would need statutory authority before specific rules could be written.

32-1602 Board of Nursing

The statute regarding duties of Board members will be referenced as a technical change.

32-1603 Qualifications of Board Members

Qualifications of board members will remain the same with the provision that one or more members have CNA and Advanced Practice experience in their background. Committee members would appreciate more members on the board that are currently engaging in direct patient care.

32-1605 Meetings

Members discussed the role call vote and expressed concern with leaving the decision solely up to the chair. The provision is in statute (§32-3205). Members stated that the record should always reflect individual votes which would be the only way to determine whether or not there is inappropriate conduct.

Members discussed immunity for Board members. Immunity for Board members may be under another statute; however immunity for Board members is not in Nurse Practice Act. Immunity will be added.

32-1605.01 Executive Director; Compensation; Powers; Duties

Members requested clarity regarding situations when there is a need for a temporary license. Members felt there needs to be a clause in the temporary licensure statute that provides notice and the basis of rescission so that the temporary license holder would be informed and not run the risk of practicing with a rescinded temporary license.

Regarding the executive director's ability to enforce stayed revocations, members stated that this provision would constitute a due process violation, and that the Board should have the final say. Ridenour maintained that the Board actually has the final say in that the consent agreement outlines requirements for the respondent and clearly states that failure to comply with the consent agreement would automatically result in a stayed revocation. Committee members stated that the automatic stayed revocation creates more work for Board staff. Ridenour will look at the consent agreement and see if a clause could be added to allow the respondent an appeal right. The matter should be addressed through the consent agreement rather than statute or rule.

Members requested information and clarity with regard to the statement "issue temporary and permanent certificates for AP including NP, CNS, and CRNA". Randolph offered that the temporary license is for those who have graduated and have not yet taken the certification exam (there may be a 4-5 month wait for the exam). It does not include prescribing and dispensing. It is meant for the certification process because some of the exams are held only twice a year. The exam schedule for CRNA varies. Temporary permits are issued in many states.

32-1606 Powers and Duties of the Board

Randolph will research other Boards and provide language regarding "engage in pilot studies". Education, clinical practice, scope of practice would be areas that might utilize pilot studies.

Cost recovery/charge for monitoring will be deleted.

Members agreed to add "may keep confidential home address/phone number". Committee member discussed safety issues and that home addresses and telephone numbers should be considered personal. While it was the consensus of the Committee that personal information should remain confidential. Ridenour will research to see if other Boards have adopted this provision and utilize the same language.

Consider CNS prescriptive authority will be deleted. There are less than 200 CNS in state, and very few have had core curriculum to allow them to prescribe.

32-1631 Acts and Persons Not Affected by Chapter

Randolph provided clarity for adding an exemption for advanced practice nursing students. Typically a student enrolled in AP program practices AP nursing within the

program. The AP student must be licensed to practice professional nursing in this state. It would include compact nursing licenses.

Randolph addressed the committee stating that there was a need for this provision with the advent of online nursing programs and other nurse educators visiting states. There has not been any statutory authority to state whether these persons could practice in the state or not. Members discussed adding “providing nursing education or consultation electronically or in person by any legally qualified registered nurse who resides in another state not to exceed 30 days in any calendar year and not involving direct patient care.” Members did not agree using the term consultation, and were concerned because many people do remote patient consultations. Randolph provided that the national model suggests that if you are teaching electronically for a program in a particular state you should be licensed in that state. Members stated that there should be more than one model covering consultation, education, and practice/patient care. Members suggested a longer time frame for education (180 days/6 months), and a shorter time for consultation.

Randolph addressed the Committee regarding adding “providing didactic nursing education within this state using distance methodology from an educational institution located in another state by a nurse licensed in the state where the institution is located” and defining the term didactic. The matter arose as a result of a challenge to this rule. There is a university residing in Arizona which has a large component of distance education and a large number of nursing educators that are not licensed in Arizona. The current definition of nursing practice does including teaching nursing. It is the position of the board that the educators are electronically traveling to Arizona and delivering education from that website. The Board maintains that it is a jurisdictional issue and educators must hold an Arizona or compact license. These educators would have the exemption period of six months which may eliminate the issue. This item will be deleted.

32-1632 Qualifications of Professional Nurse; Application for License

Eliminate practice as a “graduate”. This item will be used as a place holder as a temporary license for immediate graduates, not related to test results but other aspects of the practice – safety and competence. The item will be left in at this time.

32-1633 Examination of Professional Nurse

Add information that the Board shall require retesting if the Board, in its opinion and based on credible evidence, believes the security of a licensure exam was compromised or irregularities occurred. The words “in its opinion and” will be deleted. Harris suggested that this item should be under Powers & Duty.

The discussion regarding suggested statutory changes will continue at the next meeting. Committee members will begin with 32-1634.01.

V. DISCUSS ADDITIONAL MEMBERS FOR NPA STEERING COMMITTEE BASED ON POTENTIAL CHANGES TO BE RECOMMENDED TO BOARD IN NOVEMBER 2007

This item was not discussed. The matter will be addressed at the November 1, 2007 meeting.

VI. REVIEW OF TIMELINE

This item was not discussed. The matter will be addressed at the November 1, 2007 meeting.

VII. CALL TO THE PUBLIC

There was no call to the public.

VII. FUTURE TOPICS – DEBRIEFING

Ridenour noted that the deadline for dropping a bill for agencies is November 15th.

Next meeting: Thursday, November 1, 2007, 1:00 p.m.

VIII. ADJOURNMENT

There being no further business, Ridenour adjourned the meeting at 12:05 p.m.

Minutes Approved by: _____



Pamela Randolph, RN MS PNP
Associate Director of Education and Evidence Based Regulation

10/18/07
Date

kgb