



Janet Napolitano
Governor

Joey Ridenour
Executive Director

Arizona State Board of Nursing

NURSE PRACTICE ACT STEERING COMMITTEE

MINUTES

SEPTEMBER 30, 2008

MEMBERS PRESENT:

Adda Alexander, RN MBA
Kathryn L. Busby, JD
Mary Griffith, MN RN
Gregory Harris, JD
Rory Hays, JD
Anne McNamara, PhD RN
Jennifer Mensik, PhD MBA RN
Mardy Taylor, MBA RN (telephonic)
Mary Wojnakowski, RN CRNA

BOARD STAFF ATTENDING:

Joey Ridenour, Executive Director
Pam Randolph, Associate Director, Education
Valerie Smith, Associate Director, Investigations
Amy Foster, Assistant Attorney General
Kim Zack, Assistant Attorney General
Karen Gilliland, Board Staff

MEMBERS ABSENT:

Joyce Benjamin, RN MS
Brandon Coakley
Kathy A. Scott, RN MPA PhD FACHE

GUESTS PRESENT:

Amy Frasciscus, AzNA
Nicole Laslavic, Lobbyist AzANA

I. CALL TO ORDER & WELCOME/INTRODUCTION TO NEW MEMBERS

Ridenour called the meeting to order at 3:09 p.m. Ridenour announced Theresa Crawley's resignation from the Board and the Nurse Practice Act steering committee.

II. REVIEW/APPROVE MINUTES OF APRIL 17, 2008

McNamara moved and Harris seconded to approve the Nurse Practice Act Steering Committee meeting minutes for April 17, 2008 without correction. The motion carried unanimously.

III. REVIEW REVISIONS/CHANGES NURSE PRACTIC ACT & EVIDENCE TO SUPPORT REVISIONS

Ridenour opened this agenda item and invited representatives for the Arizona Nurses Association (AzNA) to share the concerns outlined in the document distributed by Rory Hays. The 'Recommendations for 2009 Nurse Practice Act Proposed Legislation' detailed AzNA concerns and offered proposed revisions and recommended language to be substituted and/or included.

1605.01(C)

Hays addressed the committee stating that the revised statutes must be made clearer for the regulated population and for the Board. Hays noted that the extension of the executive director powers relative to terms and conditions for delegation was one of AzNA's biggest concerns. Hays stated that the language for terms and conditions need to be very specific with the process by which the Board is going to adopt policies. Policies should be readily accessible not only through the website but also through an official process. Hays recommended the use of 41-1091 which is a substantive administrative statement process. Randolph offered that while drafting the revisions it was intended to be a substantive policy. Randolph found no problems with the proposed language providing the Assistant Attorney Generals approved it.

Randolph stated that in the second part it was difficult to distinguish between number 1 and number 3, so both sections were combined for clarity. As directed by the group, Randolph combined into one sub-subsection so that there are two conditions for dismissal, one if there is no evidence substantiating a complaint and if after an investigation there is insufficient evidence of a violation. Numbers 1a, 1b and 2 will be kept, and 3 will be subsumed into 1b. Ridenour offered that the rationale for that is to close those cases earlier based on no merit. The Board will still receive a list. Ridenour also stated that it is sometimes publicly announced that presently 60% of cases result in discipline and 40% are non-discipline. Formerly 20% of cases were discipline and 80% were not. There are criteria for the triage process whereby many of the cases are not opened. In the past, all cases were opened and those not warranting investigation were summarily dismissed. While there has been an increase in cases of about 15 per month (which may be influenced by population growth) and the percentage appears higher now, the rate of disciplinary action is about the same.

Harris noted that the language proposed by AzNA for 1605.01(C), is similar but not identical to the language used in the medical board statutes dealing with the executive director authority which is more expansive than dismissal and covers a broader range of delegated authority. This language would only empower the executive director to dismiss cases and take no other action. Randolph noted that there are other delegated tasks in addition to dismissal. Dismissal was looked at because of the need for clarity. The medical board statute was used as a template and all of the powers and duties that the medical board executive director had were considered. The group decided which ones would be relevant to AZBN processes. Members discussed the significance of the statutes being the same. Zack offered that the language is not the same because the statutes are not the same as the disciplinary process and statutory procedure are different.

32-1664

Hays asked the committee to review the proposed changes submitted on behalf of AzNA with regard to reorganization of the regulation article to better reflect the discipline process.

An additional concern also under regulation pertained to specific requirements for obtaining personal medical records of a regulated party. Hays directed the committee to 32-1664(B) of the AzNA recommendations that lists the following requirements which must be met in order to obtain the medical records of a regulated party: 1) there must be an investigation pursuant to 32-1664; 2) the board issues a subpoena or written request, and at the same time notifies the regulated party; 3) there has to be a nexus between records and the evidence of the complaint. Hays further stated that AzNA's concern is that the way the language reads that was in the most recent version, there can be a complaint dealing with an issue that has nothing to do with personal medical records and yet the fact that there is an investigation and there is a complaint, gives the board the authority to request personal medical records. The language drafted attempts to clarify the nexus as between what is being investigated. The investigation should be a function of the nature of the complaint, yet there is nothing in the proposed language that limits the board's access. The proposed revision is an attempt to take what was talked about conceptually and have it reflected in the language of the statute. Hays maintained that the statute needs to direct when it is appropriate to obtain personal medical records.

Members inquired as to whether or not there has been an instance where there's been a request for medical records that was inappropriate, and requested clarity regarding the triage process. Subpoenas are determined during the triage process. Smith offered that an incoming complaint may allege substance impairment or a medical condition that may lead the respondent to be unsafe, warranting the subpoena of medical records. Additionally, information may come up during the course of an investigation which may require the issuance of additional subpoenas. Personal medical records are not subpoenaed if the circumstances cited in the initial complaint do not require the examination of such records and are not relevant to the complaint.

Zack stated that the proposed language under Section 32-1664.B does not clarify or make different what is in Section 32-1664.A, and offered that Section A is identical to the statute of every other medical regulatory board in the state. Hays maintained that "in connection with the investigation" is not a sufficient nexus between the evidence the board has. For personal medical records the statement is far too ambiguous. Alexander questioned whether there is an advantage to having the language be similar to that of other medical regulatory boards. Zack noted that while there may not necessarily be an advantage to having similar language, the legislature has looked at the language several times and found it to be reasonable and in the interest of public safety. Busby offered that there may be case law to support the language. Member further discussed potential challenges to the board regarding receipt of documentation. Zack noted that any complaint regarding the release of medical records would go directly to the provider and not to the Board.

The impetus for AzNA to bring this matter forward was the result of a complaint to a senator. Hays stated that the legislature may not be aware of the ease with which medical records can be obtained. Zack noted that there is no opposition to including nexus language, as it would not change the current procedure of the Board for investigations in any way. However, there are concerns with limiting the ability to determine if that nexus exists to solely the Board. Hays stated that AzNA is willing to consider delegation to the Executive Director providing the Board lists criteria for an appropriate delegation standard.

Committee members discussed the right to issue subpoenas without notification under HIPAA, noting that HIPAA allows for states to make more restrictive laws. Members also discussed the possibility of the respondent not receiving notice of a subpoena. Harris offered that it may result in a procedural trap for the Board that without remedies for such a possibility may limit regulatory authority.

Smith offered that the respondents requiring the subpoena of personal medical records to evaluate evidence are aware that the Board will issue a subpoena for such records. Ridenour added that there have been instances where chemically dependent nurses have tried to block access to medical records. In some cases, investigations were impeded not only by the respondent but by their attorneys resulting in the nurses' deaths. Zack noted that quite often authorizations for medical records are obtained.

Hays will review the simultaneous notice of subpoena as it may interfere with the investigative process.

32-1601.16.g

Hays addressed the committee stating that under section 32-1601.16.g the phrase 'willfully and repeatedly' was removed thereby creating a strict liability standard. Hays stated that AzNA's concern is that with a strict liability standard the supervising regulated party must report everything even if their employer has a policy with regard to discipline and ANA codes of ethics. Hays noted that the recommended language seeks to allow for consideration of those policies and codes of ethics that already exist, and while it may not be a perfect solution the matter needs to be addressed. Harris offered that the recommendation is aimed at allowing the phrase to be removed from statute, but essentially builds in a good face defense in the duty to report statute in 32-1664.

Ridenour offered that the phrase was removed because it conflicted with another statute, and that it was typically used for someone who is chemically addicted and uses multiple diversions. Smith stated that the Board wants employers to attempt to resolve issues and should report only after remediation has failed. Randolph stated that this may be addressed under the definition of unprofessional conduct. Ridenour will review it.

Jennifer Mensick, Adda Alexander, and Kathy Busby will work with Board staff on 'duty to report'.

32-1664.01(D)

Hays stated that most boards have a ‘recognition of the right to obtain counsel’ statute. In drafting the recommendation Hays stated that she did not want to raise the argument that somehow respondents are not only entitled to counsel, but the Board must to provide it.

Ridenour offered that there is no objection to this being in statute, however the matter is addressed in rules under ‘legal representation’. Ridenour will include this statement in the letter received by respondents when a complaint is under investigation.

32-3206; 32-1664.01(I)

Hays addressed the committee stating that under 32-3206 there is some question as to when people may obtain information, and whether they should be entitled have access to the written report the Board receives.

Ridenour offered that the investigative report is simply the end of the investigative process, at which time the Board has a right to ask questions. It is not used to supplant a hearing. Zack stated that 32-3206 does not prevent the Board from releasing a copy of the investigative report; it is the confidentiality statute which maintains that anything in the investigative process is confidential. Ridenour noted that the respondent is aware of what the Board is considering during investigative process. However, the respondent may not receive a copy of the material until the matter goes to hearing, and is not entitled to access to the investigative report as it contains information that is not part of the disciplinary process. Zack also stated that the investigative report is relied upon solely to determine if the investigation warrants discipline.

Proposed Statutes Related to Medication Technicians

Hays addressed the committee stating that the issue of delegation is controversial among nurses, and because of that further discussion with nurses is needed. AzNA’s main areas of concern are as follows:

- Right to refuse to delegate
- Controlled substance administration
- Eligible patients/settings
- Replacement of licensed nurses
- LPN scope of practice
- Availability of RNs

Hays noted that there is a concern that medication technicians will potentially be abused. AzNA seeks to prevent that from happening and wants to make ensure that there is appropriate RN supervision. Randolph offered that most of the research shows that the med tech is safe as part of a team and that the safety in it relies on the presence of licensed nurses to be carrying out their function. Busby will share information regarding liability delegation issues from different states with Hays. Hays and Randolph will work on eligible patients/setting together.

Pilot facilities are being allowed to continue to train and utilize pilot study medication technicians. Hays recommended extending the project which will allow for continued clarification of language. Ridenour suggested extending for two years.

CRNA 32-1601.3.Definitions

Wojnakowski stated that their organization is still working on a definition of CRNA. The one definition that they do have an issue with and would like to not be included in is the definition of Advanced Practice Nurse (APN). Wojnakowski noted two reasons for objection. The primary reason for not wanting to be included is the way that the Board uses the definition throughout the statutes. It appears as a general term to ease the Board's regulatory and rule writing process. Wojnakowski stated that there are many instances where the term APN is used to discuss certification, accreditation of programs, and the requirements that are placed on that are not congruent with CRNA accrediting and certifying bodies. Every time the Board writes a new statute or promulgates a rule and it is not applicable to nurse anesthetists, CRNAs will have to meet with Board staff to request exclusionary language. Members suggested going through the statutes and including exclusionary language where appropriate.

Wojnakowski stated that NCSBN will have an APN compact, model rules and regulations, consensus model. The AANA, COA, CCNA, and the COR are not endorsing either of those documents at this point, and are recommending that none of their state nurse anesthetist associations participate. There were two particularly significant issues in the final document that was produced that the AANA provided commentary on that NCSBN did not take into consideration and revise. This would make nurse anesthetist unable to be compliant with those model rules. At his point is not prudent to participate in that definition of APN and will not want to be included in the national compact as well.

Two primary issues revolve around dictums concerning accreditation for nurse anesthesia programs and then prescription authority in the national council's document which would prohibit nurse anesthetist from being able to perform their job. CRNA cannot be included in the current definition of APN and therefore request to be excluded at this time.

Ridenour stated that there is not statutory sufficiency to have the prescribing rule and asked Wojnakowski to offer something that would be acceptable for CRNAs. Wojnakowski suggested putting something under the section that describes what the Board is able to do, that they are able to promulgate rules and regulation regarding registered nurses that deliver anesthetics. CRNAs do not want to be defined because it creates an opportunity for anesthesiologist to inject supervision.

Board staff maintained that despite the fact that CRNAs are defined in rule, they must be defined in statute for purposes of regulatory authority.

Wojnakowski will meet with legal council.

Board staff will meet on Tuesday, October 14, 2008 and return to the committee with options.

IV. REVIEW FUTURE DATES FOR PUBLIC OPEN FORUMS TO DISCUSS PROPOSED CHANGES TO NURSE PRACTICE ACT

Ridenour will ask legislative counsel to assist with draft.

Board staff will meet with Wojnakowski at 1:00 p.m. on October 14, 2008 to discuss the CRNA issue.

The next committee meeting will be held on Tuesday, October 28, 2008 3:00 p.m.

V. CALL TO THE PUBLIC

There were no members of the public in attendance.

VI. ADJOURNMENT

There being no further business, Ridenour adjourned the meeting at 5:13 p.m.

Minutes Approved by: Joey Ridenour RN MN FAAN 09/30/08
Joey Ridenour, RN MN FAAN Date
Executive Director

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