Keep It Safe and Legal: What Advanced Practice Nurses Need to Know

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Board of Nursing Role:

- Public Protection
Board of Nursing Role:

- Oregon Regulatory Statute 678
  - Nurse Practice Act
    - Division 45- RN & LPNs
    - Division 50- NPs
    - Division 52- CRNAs
    - Division 54- CNSs
      - License and/or certificate to practice
      - Authorization of scope of practice parameters
    - Division 56- APRN Prescriptive Authority
      - Authorization of prescriptive & dispensing authority
  - Disciplinary sanctions
  - Educational guidelines, criteria, & approval
2017 Legislative Session

**House Bills**
- HB 2103- NPs may perform vasectomies
- HB 2114- Directs the Board of Medicine, Nursing, Dentistry, and Naturopathy to provide guidelines on opiate prescribing
- HB 2645- Directs the development of a “Drug Take Back” program
- HB 3439- Professional Corporations must allow NPs to have a majority of voting shares in the practice.

**Senate Bills**
- SB 48- OHA and health licensing boards are required to track licensees who participate in Suicide Prevention training
- SB 72- Removes a test for NPs/CNSs to have Dispensing Authority. All NPs/CNSs now have dispensing authority.
- SB 73- Adds CNSs and CRNAs to prescriptive authority renewals.
- SB 74- Clarifies that APRNs can write “orders” medical treatment.
- SB 964- Clarifies that NPs and PAs may have hospital privileges, and the hospital may regulate credentialing and conduct of NPs and PAs.
Prescriptive Authority : Oregon

- APRN Authority to Prescribe and Dispense
  - Division 56:
- Initial Requirements:
  - National specialty certification
  - Completion of graduate level (APRN)
    - Physical Assessment
    - Pathophysiology
    - Pharmacology
    - 45 contact hour related to the specialty scope of practice
      - 3 Credit Quarter Course = 30 hrs.
      - 3 Credit Semester Course = 45 hrs.
Prescriptive Authority : Oregon

• Renewal Requirements:
  • Maintenance of national certification ; OR
  • 45 CE with 15 Pharmacology specific hours (every 2 years); AND
  • A minimum number of hours of prescriptive management each renewal
    • 150/2 years
Prescribing Essentials

- Legal Requirements for Nurse prescribing:
  - Establishment of client relationship
  - **Documentation that patient was a client and has been assessed**
  - Medication must be legal for APRNs to prescribe
  - Must meet state and federal guidelines
  - Must be FDA approved
  - DEA number if controlled substance
Prescriptive Authority

DEA

- Regulate **MD, NP, & PA** authorized Opioid Addiction Treatment:
  - Methadone
  - Buprenorphine (Suboxone)
    - Waiver in 2017 for NPs and PAs
- Enforces complaints about:
  - Manufacturing
  - Abuse
  - Illegal distribution of controlled substances
Hot Topics/Board Actions

• Division 50/56 are open and under review
  • Focus on NP Education
  • Office Based Procedures
    • Anxiolytics, analgesic or anesthetic agents
  • Records keeping and charting requirements
  • Adopting the Oregon Opioid Guidelines
  • Mandatory Education on prescribing/pain
• OSBN Position Statement
  • NMMPs performing “Primary Care”
• Online initial and renewal applications
  • SSN requirement/disclosure statement
• Suicide Prevention CEUs
Scope of Practice Decision-Making Guideline

• NPA is written broadly.
• Scope of Practice Decision-Making Guideline is useful tool for specifics.
• Different nurses in different settings may have opposite conclusions!
• Requires application of critical thinking to a given situation.
• Facility policies, community standards, best practices, and evidence-based recommendations may apply.
FAQs

• Q: What is the difference between License versus Certification?

• A: The OSBN uses the term License for
  • RNs
  • CRNAs

• The OSBN uses the term State Certification for
  • NPs
  • CNSs

• Certification is easily confused with National Board Certification which is required for State Certification (Licensure)
  • This is a statutory issue that the OSBN would like to address in the next legislative session
FAQs

• Q: I am under the supervision of a MD in my role as an NP. What is my liability for malpractice when I take direction from my supervisor?

• A: APRNs (CRNAs, CNSs, and NPs) are “licensed independent practitioners” or LIPs in Oregon.
  • APRNs are solely responsible for their own clinical decision making as well as the liability risk.
  • A health entity may assign you a “supervisor” who is in fact a MD or DO, but this is only an administrative “supervisor”.
FAQs

• Q: I would like to be able to treat patients with substance use disorder with Suboxone. Can an **APRN** in Oregon prescribe for Suboxone?

• A: Federal guidelines for Medication Assisted Treatment stipulate that **qualified MDs, NPs**, and **PAs** may currently prescribe Suboxone.
  
  • CARA Act 2016
  
  • OSBN permanent Rule Hearing September 2017
(5) Prescribing controlled substances:

(a) APRNs shall only prescribe the controlled substances from Schedules II–V, at the level provided for on their DEA certificate.

(b) Nurse Practitioners who treat opioid addiction must demonstrate that they meet federal requirements and obtain a waiver from the Substance Abuse and Mental Health Services Administration (SAMHSA). To qualify for such a waiver, nurse practitioners must:

(A) Hold a current DEA registration with an identification number that specifically authorizes him or her to engage in medication assisted treatment of opioid addiction;
(B) Hold current Nurse Practitioner Certification in Oregon;
(C) Hold current Prescriptive Authority (NP-PP designation on licensure);
(D) Complete all SAMHSA required training related to the treatment and management of opioid addiction;
(E) Comply with all federal and state regulations applicable to controlled substances.
FAQs

• Q: I have patients who would like to return unused controlled substance medication. How should I approach these requests?
• A: APRNs are not permitted to independently “take back” controlled substances EVER.
  • To find out if your community has an authorized drug take back facility:
    • DEA Call Center 1-800-882-9539
    • DEA Website http://www.deadiversion.usdoj.gov/drug_disposal/takeback/
  • Oregon has a permanent collection Box List:
  • Please ask that your patients DO NOT flush meds down the toilet
FAQs

Q: I am an NMNP who lives in a rural area where access to primary care is a problem. I have taken patients who are elderly and diagnosed with chronic illnesses into my practice because they have no other option. I have taken courses that have helped me to help my patients and have had no problems. Surely the Board would make an exception in the interest of access to care.

A: OAR 851-050-0005

(8) the nurse practitioner will only provide health care services within the nurse practitioner’s scope of practice for which he/she is educationally prepared and for which competency has been established.

- While you may not have had any issues, you have not demonstrated to the Board the qualifications necessary to handle patients who have health and injury issues outside of that which is defined for your population focus as an NMNP.
FAQs

• Q: I am a PMHNP. I also have my FNP training (masters). I did not renew my FNP certification as I work as a PMHNP. I am wondering if I can perform history and physicals because of my status as a nurse practitioner. These history and physicals would be performed in a psychiatric setting.

A: OAR 851-050-0005

(8) the nurse practitioner will only provide health care services within the nurse practitioner’s scope of practice for which he/she is educationally prepared and for which competency has been established.
Resources:

• Wickenhagen Pain Management Article:
  • http://epubs.democratprinting.com/publication/?i=214579
• Oregon Board of Nursing Website
  • http://www.oregon.gov/OSBN/Pages/index.aspx
• Prescriptive Authority Handbook for APRNs
  • http://www.oregon.gov/OSBN/pdfs/publications/prescriptive_booklet.pdf
• Ask a Scope of Practice Question- Email
  • osbn.practicequestion@state.or.us
• OSBN APRN Web page
• Oregon Public Health Division's website
  • www.healthoregon.org/opioids
• CDC Guidelines
  • http://www.cdc.gov/drugoverdose/prescribing/guideline.html
• Safe and Competent Opioid Prescribing Education:
  • https://www.scopeofpain.org/
• Providers clinical support system for MAT
  • http://pcssmat.org/
• CARA Act
Investigatory Process

**What Happens When a Complaint is Received?**
The primary purpose of an investigation is to protect the public from practice that is in violation of the Practice Act.

**Mandated by state law to investigate all complaints. ORS 676.165:**
When a health professional regulatory board or the Health Licensing Office receives a complaint by any person against a licensee, applicant or other person alleged to be practicing in violation of law, the board or office shall assign one or more persons to act as investigator of the complaint.
Investigatory Process

Complaint will be assigned based upon:

• Jurisdiction of the OSBN.
• Triage Committee
• Scope Tree
• Complaint Evaluation Tool
• Possible Practice Issue identified by the complaint: Nurse Investigator or Non-Nurse Investigator. 13 total investigators: 9 non-nurse, 4 nurses. Average caseload of about 40-45 cases.
• Senate Bill 235 (1998): Timeline for “complaints” investigation
Investigatory Process

Investigations Process:
If the investigator feels that the safety of the public is or could be at risk, with the nurse’s continued practice during an investigation, the investigator can:

• Request the licensee sign an Interim Consent Order

• If licensee refuses, request that the Executive Director call an emergency meeting of the Board to request an Emergency Suspension.

• Ask the Board to order an evaluation to determine Fitness to Practice. Accepting a license is considered consent to evaluation if one is ordered.
Investigatory Process

- Boards have significant leeway regarding HIPAA
- Can subpoena medical and other records
- Records can come from several sources:
  - HIPDB (Healthcare Integrity and Protection Data Bank)
  - Other Regulatory Boards (such as Board of Medicine)
  - Other Regulatory Agencies (DEA, CMS)
  - Pharmacy data banks
  - Insurance billing records
  - National Practitioner Databank
  - Prescription Drug Monitoring Program (Patient, Licensee or Prescribing Practice)
  - Malpractice Suits
Investigatory Process

• Compel cooperation of a licensee. “Failure to Cooperate”

• ORS 678.150 (g): ...when a subpoena is issued to an applicant, certificate holder or licensee of the Board, a claim of nurse-patient privilege under ORS 40.240 or of psychotherapist-patient privilege under ORS 40.230 is not grounds for quashing the subpoena or for refusing to produce material that is subject to the subpoena
Other Records which may be Reviewed

• Resume
• Personal Statement of Event
• Personal References
• Job Descriptions
• Continuing Education documentation
• Research pertaining to off label use, other specialized scope of practice issues
• Competency Based Training certificates
Investigatory Process

• Once the Investigator has compiled information a determination is made if there was a violation of the Nurse Practice Act, a specific section of the ORS and the associated OAR must be cited. The Investigator will also make a non-binding recommendation to the Board.

• If no violation is noted, the Investigator must still write a report for the Board but no section is listed since there was no violation found.
Investigatory Process

• Once the Investigator has Completed the Investigation:
  
  • The investigator has no authority to act on a license, only provides objective information to the board

  • The Board, Based on the information in the report, may:
    
    • Dismiss the case: No action taken

    • Letter of concern: Not considered discipline.
Investigatory Process

• Reprimand: Discipline, stays on your license for the life of the license.
• Suspension, with or without conditions: Discipline, stays on your license for the life of your license.
• Probation: Discipline, months or years of monitored practice, stays on your license for the life of your license.
• Revocation: Discipline, may be able to re-apply after 3 years, stays on your license for the life of your license.
• Opt for surrender of License: Re-apply after 3 years, stays on your license if re-entry is granted.
• Impose a civil penalty up to $5,000.
Investigatory Process

After the Board Decides:

• The Notice is entered into the Investigation Record.
• If discipline is imposed, it will be posted on the Board Website and becomes public knowledge. It will also be published in the Sentinel.
• Notices to a licensee from the Board will be public knowledge in regard to Suspension or Revocation.
• If the licensee does not agree with the Board decision there is a right to appeal. The process is explained in the Board Order sent to the Licensee.
Investigatory Process

- If the Licensee appeals, information is sent to State Attorney General for Appeal preparation and Hearing by an Administrative Law Judge
- Case sent to Probations department for monitoring OR sent to the Health Professionals Services Program (HPSP) for alternative to disciplinary process if impairment is determined
Common APRN Disciplinary Action

5 Main Points:

• Prescribing
• Documentation
• Communication
• Licensure
• Telehealth
Case Review

**Prescribing:** An NP recently moved to Oregon from a State where independent practice is not allowed. Opened a private practice. It is noted by several pharmacies that large amounts of opioids, with repeating scripts at specific locations come in on Friday, Saturday and Sunday. All the same provider. Several Regulating Boards notified. Investigation(s) occur. DEA. Now in Federal Court.
Case 2

**Documentation:** A FNP working in a critical access area of Oregon is reported to the Board for failure to complete several records, which may impact billing. NP is the sole provider in a busy rural clinic. Despite a work plan licensee is unable to complete or maintain documentation.
Case 3

**Communication:** NP reported to the Board with a copy of a prescription that was faxed to a pharmacy that reads... “Fill the F’ing script you F’ing idiots.”
Case 4

**Licensure/Certification/Signature:** An RN is reported to the Board for presenting themselves as a “Doctor” and CNS to the public. Licensee has a doctorate in a non-health care related profession. Licensee is licensed with OSBN as an RN only. Licensee has obtained CNS certificate from ANCC but is not licensed as such in Oregon.
Case 5

**Telehealth:** A FNP living on the East Coast but licensed and certified in Oregon is conducting “telehealth” on several Oregon residents for a Company based in the Midwest and utilizing a Pharmacy in the South.
Thank You

Questions????
Resources

• Please see the resources below for further information:

  • OSBN Decision Tree
  • Nurse Practice Act, 851-045-0070, Conduct Derogatory
  • Nurse Practice Act, 851-050, Nurse Practitioners
  • Nurse Practice Act, 851-056, Advanced Practice Registered Nurse Authority to Prescribe and Dispense
  • Board Interpretive Statements
  • Investigation Handout for Discipline
  • Complaint Evaluation Tool
Contact Information

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