

Ohio Nursing Law



Our annual continuing education offering for Ohio nurses and dialysis technicians.

A publication for all members of the nursing profession.

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Approval Statement:

This continuing nursing education activity was approved by the Ohio Nurses Association (OBN-001-91), an accredited approver by the American Nurses Credentialing Center’s Commission on Accreditation.

Expiration Date:

Approval for this program valid through March 2, 2011.

Contact Hours:

1.0 contact hours of Category A continuing nursing education related to the laws and rules in Ohio.

Cost: \$15.00

- 19 Answer Sheet

Welcome to the 2009-10 edition of Ohio Nursing Law!

Since 2002, we have provided Ohio nurses with required courses in the laws and rules related to the practice of nursing in Ohio.

Thank you! We truly enjoy serving you.

Ohio Nursing Law



P.O. Box 21186
Columbus, Ohio 43221-0186

A publication for all members of the nursing profession.

A Word About Copying

We work hard to research cases and compile information for you into useable, interesting formats. We want you to enjoy learning from our material.

But every year we have organization(s) choose to use our material as their own course material. We do not want that to happen, because we have spent many hours and many thousands of dollars to develop this program and mail it to every nurse in Ohio. And so we provide the following statements of ownership and a word about copying:

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Questions? Call us at **(614) 481-8711**.

Ohio Nursing Law is a division of Select CE®, a provider of continuing education programs for healthcare professionals.

OHIO NURSING LAW

Volume 6

Expires March 2, 2011

Ohio Nursing Law presents this continuing education (CE) program:

2009-2010 Ohio Nursing Law Program – Disciplinary Cases

A big “thank-you” to those who have taken our CE programs and provided evaluation comments to us in the past. Your comments confirmed several points. First, you told us that you both enjoyed and learned a lot from the real-life scenarios. Second, you told us that you learned a lot from the “plain English” writing style of our programs. Good; we work hard at that. And third, you want to learn about violations of nursing law or rule that are not so blatant, not so severe, as to cause the nurse to permanently lose his or her license to practice nursing.

So in this next volume of Ohio Nursing Law our goal is to do all of the above. The objective of this program is this: for you to be able to identify real-life situations where nursing behavior has broken a rule or law related to the practice of nursing in Ohio and as a result the Ohio nurse received Board-imposed discipline. Then, you should be able to apply what you have learned to new fact patterns.

In this program, you will read about nurses disciplined by the Ohio Board of Nursing (the “Board” or “Board of Nursing”). In each case, the nurse or dialysis technician or community health worker (all of which are regulated by the Board of Nursing) broke a rule or law. Each apparently forgot that the right to practice as a health care professional is not an automatic right granted because of one’s education or experience. It is a **privilege** granted by the State of Ohio under authority of its Board of Nursing to those who comply with its laws and rules.

Besides being a great learning tool, you can take the post-test and complete the evaluation at the end of this program. For the approval statement for CE credit, please see the next page under “Approval”. And friends, this is a CE program. It is not legal advice, and it should not be construed as such. We are reporting to you what has gone on in the past, with some commentary, to help you make good decisions in the future. If you have questions about any specific situation, call an attorney experienced in that area of law. With that said, read on and learn!

Target Audience: All RN's in Ohio

Approval Statement:

This continuing nursing education activity was approved by the Ohio Nurses Association (OBN-001-91), an accredited approver by the American Nurses Credentialing Center's Commission on Accreditation.

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Fee Information: \$15.00 for 1.0 contact hours

Estimated Time to Complete the Activity: 60 minutes

Procedures: To receive a certificate of participation, read this booklet and complete the Post-Test Questions and Evaluation on the Answer Sheet. Mail the Answer Sheet and Program Fee of \$15.00 to us. Checks and money orders are encouraged. Mail to: Ohio Nursing Law, P.O. Box 21186, Columbus, Ohio 43221-0186. A minimum score of 70% is required to earn credit. Allow 2 weeks to receive your certificate of participation.

Faculty: Our RN nurse planner for this program was Shelley Martin, BSN, CSPI. Content provided by Patty Nussle, R.Ph., J.D., a healthcare attorney in Ohio. Course review provided by Wynne Simpkins, BSN, MS.

Disclosure of Unlabeled Uses, Bias and Conflicts of Interest: There are no commercial products or drug products displayed, discussed (including unlabeled uses), mentioned, related to, or used in conjunction with this activity. The planning committee and faculty for this program presented the information in this program fairly, without bias and report no real or apparent conflicts of interest. There is no commercial support.

Objective: To identify real-life situations where nursing behavior has broken a rule or law related to the practice of nursing in Ohio and as a result the Ohio nurse received Board-imposed discipline.

I. Law/Rule Regarding Category A Continuing Education

In late 2008, the Ohio Board of Nursing (OBN) held a hearing related to "Category A" continuing nursing education, which means the portion that meets the one-hour requirement directly related to Chapter 4723 of the Revised Code and the rules of the OBN as set forth in Rule 4723-14-03, OAC.

As result of the hearing, the new rule requires any **Category A obtained on or after February 1, 2009** to be approved by an OBN approver, or offered by an OBN approved provider unit, that is **headquartered in the state of Ohio**.

Both the provider (Ohio Nursing Law) and the OBN approver of this Category A program (Ohio Nurses Association) **are headquartered in the state of Ohio**.

II. Disciplinary Cases

Each quarter we receive the *Momentum* from the Ohio Board of Nursing. The *Momentum* is the Board's official communication to all nurses each quarter. It is developed by the Board staff and is paid for by your annual license fees and advertiser support in the *Momentum*.

Each quarter, the Board includes its lists of recent disciplinary actions in the *Momentum*. These are situations in which the Board determined that a nursing law or rule has been broken, and it takes action or discipline against the nurse's license. The Board provides the nurse's name, license number, type of action, and a very brief description for the basis of the action.

But, what happens after that? What happens to the nurse who receives the discipline? Can she work again? If so, when? If so, under what conditions?

The purpose of this program is for you to learn from actual cases in which a nursing law or rule has been broken, and discipline has been imposed on the nurse by the Ohio Board of Nursing.

Finders/Keepers, or Stealing?

Facts:

Nurse A was employed as a licensed practical nurse at a nursing home. On or about December 27, she took a wallet she found in a resident's room on the floor next to the bedside stand. Nurse A stated that the wallet had no identification and a small amount of cash and a gift card. The wallet was reported missing.

Nurse A had the next three (3) days off from work. When she returned to work she admitted the theft to the Director of Nursing. Subsequently, she returned the gift card and agreed to pay back the missing money. She also called the wallet's owner to confess and apologize for her actions. She also accepted the opportunity to resign from employment.

Local law enforcement investigated and chose not to prosecute.

Nurse A was cooperative during the course of the Board's investigation and is remorseful for her actions.

On March 29 of the following year, during the Board's investigation, Nurse A agreed to make her license inactive.

Outcome:

As a result of the above facts, the Board of Nursing suspended Nurse A's license. The suspension was for an indefinite period of time, but not less than six (6) months, retroactive to March 29 when Nurse A agreed to make her license inactive. Nurse A may submit a written request to the Board for reinstatement anytime after August 29 of the same year.

If Nurse A wishes to have her license reinstated after August 29, the key conditions for reinstatement are as follows:

- 1) she must make a written request to the Board asking for reinstatement; and
- 2) she must obtain ten (10) hours of continuing education in Professionalism and Ethics, in addition to the requirements for licensure and renewal; and
- 3) prior to reinstatement, she shall enter into a Consent Agreement with Board for probationary terms, conditions, and limitations determined by the Board which will last for a minimum of three (3) years following reinstatement; and
- 4) prior to reinstatement, the Board must determine that she is able to practice according to acceptable and safe standards of safe nursing care based upon an interview with Nurse A and a review of the documentation specified by the Board,
- 5) for the remainder of her nursing career, she will have the following permanent licensure restrictions:

Unless otherwise approved by the Board, Nurse A shall not practice nursing as a licensed practical nurse (1) for agencies providing home care in the patient's residence; (2) for hospice care programs providing hospice care in the patient's residence; (3) as a nurse for a staffing agency or pool; (4) as an independent care provider where the nurse provides nursing care and is reimbursed for services by the State of Ohio through State agencies or agents of the State; or (5) for an individual or group of individuals who directly engage Nurse A to provide nursing services for fees, compensation, or other consideration or as a volunteer.

Unless otherwise approved by the Board, Nurse A shall not function in a position or employment where the job duties or requirements involved management of nursing, nursing responsibilities, or supervising and evaluating nursing practice, including financial activity or supervision of financial activity.

After her six (6) month minimum suspension, Nurse A did apply for reinstatement of her nursing license. The Board, after determining that she had complied with all conditions of reinstatement, reinstated her license with the following key conditions during her three (3) year probationary period:

- 1) she shall appear in person for interviews as requested by the Board; and
- 2) she shall notify the Board prior to accepting employment as a nurse, each time and with every employer; and
- 3) if working as a nurse, she shall provide her employer with a copy of the Consent Agreement and have her employer send documentation to the Board that the employer has received the Consent Agreement; and
- 3) if working as a nurse, she shall have her employer submit written reports regarding her job performance on a quarterly basis for the three (3) year probationary period.

Discussion:

The job of the Board of Nursing is to investigate matters such as this, and decide how best to continue to protect the public health.

The individual facts and circumstances of each case are always important to the Board. While we do not know exactly what influenced the Board in any particular case, we can note some pertinent facts. In this case, the wallet was discovered on the floor and near a patient's bed. Reasonable people would think that the wallet is owned by the patient, or someone near the patient's bed. The wallet was not found in a public place or even in the facility's parking lot. Instead, it was found within the protected grounds of the facility and so it should

have been turned in to the security or other appropriate office of the facility. Because Nurse A failed to turn in the wallet, this could not have shown Nurse A in a good light.

Question 1:

One of the Ohio Board of Nursing's roles is to:

- a. protect the public;
- b. protect a nurse's right to work;
- c. protect a nurse's right to work in the facility of his/her choice.

Also, most reasonable people keep identification in their wallets. Nurse A's claim that the wallet contained no identification could be seen as weak or untrue, depending on what the owner of the wallet said. In any event, this claim of lack of wallet identification, unless corroborated by the owner, could not have shown Nurse A in a good light.

On the other hand, it appears that Nurse A was forthright and cooperative when initially confronted by her Director of Nursing. She also was noted to be cooperative and remorseful when later interviewed by the Board of Nursing. She also voluntarily placed her license in inactive status. These would appear to be actions Nurse A took that placed in her a better light.

Passing Bad Checks, or Worse?

Facts:

A dialysis technician (D.T.) pled no contest to a charge of passing bad checks in a local municipal court. The court found him guilty, and charged him with a first degree misdemeanor.

What effect does a charge like this have on your nursing license or dialysis technician certificate? And does it make a difference that the crime happened while the dialysis technician was taking care of his or her patient?

The law in Ohio permits the Board to discipline a nurse or D.T. “for conviction of, a plea of guilty to, a judicial finding of guilt of, a judicial finding of guilt resulting from a plea of no contest to, or a judicial finding of eligibility for intervention in lieu of conviction for, any felony or of any crime involving gross morality or moral turpitude.” ORC § 4723.28(B)(4).

This means that if a nurse or dialysis technician is convicted of “any crime involving gross morality or moral turpitude”, the Board can take action against that nurse’s license and discipline him or her.

This also means that the Board can take action against your license if a judge finds that you are eligible for intervention in lieu of conviction for any felony or any crime involving gross morality or moral turpitude. This “intervention in lieu of conviction” is most often seen as an option for people with substance abuse problems, and rather than convict the person of a drug crime, the judge can send the person to treatment.

In this case, we don’t know if the Board determined that a one-time misdemeanor of passing bad checks is a “crime involving gross morality or moral turpitude.” We don’t know because, soon after the above incident, the D.T. did the following:

Question 2:

When the Board is investigating a nurse, it:

- a. looks at all the relevant facts and circumstances;
- b. notes whether the nurse was forthright and cooperative;
- c. both a and b.

On or about August 3, you resigned your position with [your employer], and gave notice that you would work there through August 13. While employed [by this employer], you borrowed money on multiple occasions from Patient #1. On or about August 8, you purported to pay back money borrowed from Patient #1 with a check for \$350.00 dated August 5, and a check for \$200.00 dated August 6. The bank returned both checks to Patient #1 without payment due to “insufficient funds” in the D.T.’s bank account.

Outcome:

The Board charged D.T. with several violations of the Ohio Nurse Practice Act, found in Chapter 4723 of the Ohio Revised Code. The discipline can include permanent revocation of a nursing license upon proof of committing a misdemeanor in the course of practice (ORC 4723.28(B)(3)), or upon proof of obtaining anything of value by intentional misrepresentation or material deception in the course of practice (ORC 4723.28(K)).

In this situation, the Board permanently revoked the dialysis technician’s license. This person will never be permitted to work as a dialysis technician.

Discussion:

While we can never get inside the minds of the 13 people who serve on the Board of Nursing, it is useful to note that the D.T. in this case was involved in two (2) bad activities, i.e., the first crime of passing bad checks and the second crime of passing bad checks to a patient in the course of this person’s professional practice. In addition, this D.T. violated the professional boundary between the D.T and the patient when the D.T. borrowed money from the patient in the first place.

Permanent revocation is serious discipline. It is the most severe discipline the Board can hand down. It means the D.T. will never practice in this state again, and if the D.T. moves to another state and attempts to get a license, this record of

Question 3:

The Ohio Nurse Practice Act permits the Board of Nursing to discipline persons whom it licenses if the person is

“any crime involving gross morality or moral turpitude”.

- a. convicted of;
- b. found by a judge to be eligible for intervention in lieu of conviction for;
- c. both of the above are true.

Question 4:

The Board of Nursing has authority to permanently revoke your nursing license for a simple misdemeanor committed during the course of your practice.

- a. True;
- b. False

a revoked license in Ohio will follow him or her and he/she will be unlikely to obtain a license in another state.

Does it matter that the crime occurred during the course of the D.T.'s practice? Read below to see what discipline the Board has handed down to people who commit crimes outside of the scope of practice.

Failure to Disclosure of Crime on Initial or Renewal Application

Facts:

An LPN applicant submitted to the Board an Application for Licensure by Examination to Practice in Ohio as a Licensed Practical Nurse. On this Application, she disclosed that she was convicted of a misdemeanor crime of Falsification ten (10) years ago when she gave a police officer a fake ID and a fake social security number to avoid arrest because she was driving a vehicle and had not obtained a driver's license.

She was permitted to take the NCLEX-PN, and she passed.

Outcome:

The Board granted the LPN Applicant her license, but then immediately put the LPN Applicant on probation. The probation is to last at least one (1) year. The wrong-doing and probation was documented in a Consent Agreement, in which the LPN Applicant agreed to the following key terms during her probation:

- 1) she shall appear in person for interviews as requested by the Board; and
- 2) she shall notify the Board prior to accepting employment as a nurse, each time and with every employer; and
- 3) if working as a nurse, she shall provide her employer with a copy of the Consent Agreement and have her employer send

Question 5:

If a person committed any sort of crime prior to going to nursing school, that person will not be granted a license to practice nursing in Ohio.

- a. True;
- b. False;
- c. It depends on the facts and circumstances of the particular situation.

Question 6:

If a person commits any sort of crime after they have already received their nursing license, that person's license will be automatically revoked.

- a. True;
- b. False;
- c. It depends on the facts and circumstances of the particular situation.

documentation to the Board that the employer has received the Consent Agreement; and

3) if working as a nurse, she shall have her employer submit written reports regarding her job performance on a quarterly basis for the one (1) year probationary period; and

4) she will, in addition to the requirements for licensure renewal, successfully complete and submit satisfactory documentation of successful completion of an additional two (2) hours of Ohio nursing law and rules and four (4) hours of ethics.

Discussion:

In this case, we see an Applicant fully disclose her conviction of a crime on her application to be a nurse. Did this crime prohibit her from becoming a nurse? In this situation, it did not. She was still permitted to practice nursing. That she fully disclosed her conviction, that she cooperated with the Board, that it did not arise out of the practice of nursing but instead occurred ten (10) years ago during her teenage years, all likely contributed to her relatively lenient discipline of one (1) year of probation.

Question 7:

If you fully disclose your minor criminal conviction on your initial or renewal license application like the LPN Applicant did, you might expect:

- a) no action by the Board;
- b) probation;
- c) never to get a nursing license.

Question 8:

If you receive probation from the Board of Nursing, you can hide that fact from your employer.

- a) True;
- b) False.

But, probation is no picnic. Read carefully the key terms above. This newly licensed nurse will be out in the real world trying to get her first nursing job, and will have to disclose everything that happened to her to potential employer(s). Once she does get a job, her employer will have to submit quarterly reports of her job performance to the Board of Nursing. This is a burden for both the nurse and her employer. Moreover, all discipline is public record.

The Board of Nursing takes these obligations of a nurse on probation quite seriously. Read on about a nurse who failed to fulfill these obligations.

Failure to Inform New Employer(s)

About Nursing Board Discipline

Facts:

In 2002, a nurse acknowledged committing seven (7) practice errors that were brought to the Board's attention. These errors included failing to administer medication to four (4) patients in a timely manner, failing to attend to requests to empty a patient's ileostomy bag, failing to notify two (2) physicians about the conditions of their patients, and failing to completely clean a patient. Finding that she failed to practice in accordance with acceptable and prevailing standards of safe nursing care, failed to implement a prescribed regimen, and failed to promote a safe environment for her clients, the Board suspended her nursing license. However, by a Consent Agreement, the nurse and the Board agreed that the nurse could practice again while on probation. The probation terms required the nurse to complete continuing education classes, submit progress reports to the Board, and provide her employers with copies of the Consent Agreement, among other requirements.

However, within six (6) months of entering into this Consent Agreement, the nurse violated the terms of the Consent Agreement by failing to provide a copy of her Consent Agreement to her new employer.

Outcome:

The Board suspended the nurse's license, this time for a full two (2) years. After 2 years, the nurse was permitted to apply for reinstatement of her license.

She did, and in 2005, the nurse got her license back. But she again had probationary terms like before. She had to notify the Board prior to accepting employment as a nurse, provide each employer with a copy of the Consent Agreement, and not provide any false, misleading or deceptive statements, information or documentation to potential employers.

Discussion:

The reason the Board requires nurses on probation to provide their Consent Agreement to any new employer is to protect the public. Any new employer should know all the facts and circumstances regarding previous Board-imposed discipline so the new employer can appropriately monitor, train and mentor this new employee who has already demonstrated practice deficiencies.

Nurses who fail to inform their new employer of their discipline, like this nurse, can face being out of the practice of nursing for a good period of time. It was two (2) years in this case.

More Facts:

In 2007, this nurse got a job at a nursing facility. And, again, this nurse failed to provide a copy of her Consent Agreement to the nursing facility, although there was some hint that she might have provided the nursing facility with unsigned pieces and parts of the Consent Agreement. She also failed to inform the Nursing Board of this new employment.

A Different Outcome:

At the nurse's hearing on this matter, the nurse admitted her initial 7 practice errors, and also her 2 breaches of her Consent Agreement by failing to provide her first or second employers with a copy of the Consent Agreement.

As far as breaching her Consent Agreement a second time by not supplying the second employer with her Consent Agreement, she seemed to indicate that it was simply too hard to do. Her comments in *In re Straub, Case # 07-2035*:

“The way the actual Consent Agreement was worded...it made it impossible to find a job. I mean, I went everywhere. I was calling [the Nursing Board] probably every two to three weeks telling [the Board] I tried dialysis centers, I tried physicians' offices, I tried hospitals, ambulatory centers from here to Columbiana County, Cleveland, Akron, and just the way it was worded, they all said no...As soon as they saw the permanent restriction, whatever, that's across my license, nobody would even look at me....I honestly think that they should do a Consent Agreement, maybe worded a little bit differently, explain it a little bit more clearer so the actual employers actually understand what is being said, what my restrictions on my practice actually are, maybe write something up on my license explaining that because it just said permanent practice restrictions when they pull it up.”

The Board permanently revoked this nurse's license.

III. Law/Rule Regarding Public Information and Nurse Discipline

Question 9:

If you continually fail to follow the terms of your probation set by the Board of Nursing, you should expect to lose your nursing license.

- a) True;
- b) False.

Before mailing this independent study program to each RN's home, this program underwent a rigorous review and approval process at the Ohio Nurses

Association. As a condition of approval of this program, the Ohio Nurses Association strongly suggested that we improve the program by adding more specific content, such as adding the actual law regarding the disciplinary process. The Ohio Nurses Association also suggested that we discuss the public information contained in this program, and your rights to use it. And so, in the following pages, we will do just that.

The Law, Rule and Consent Agreements as Public Information

As a general rule, with exceptions for medical records and the like, the records of a public agency such as the Ohio Board of Nursing are “public information.” This means that anyone has the right to attend the Board meetings and review their documents.

Section 149.43 of the Ohio Revised Code states:

149.43 Availability of public records for inspection and copying.

(A) As used in this section:

(1) “Public record” means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units.....:

This means that you, or anybody else, can go to the Board of Nursing in downtown Columbus and ask to see their records. As a practical matter, the Board generally likes to schedule an appointment and have some idea of the types of records you are seeking.

And so, to create this program, that is exactly what we did. We made a public records request to review records of disciplinary cases from the past year. We then made an appointment to go and review the cases. We spent many hours reviewing the Board’s large black binders. We used our independent judgment to select certain cases that we thought would make a useful CE lesson, and we paid to have copies of these cases made for us; it was hundreds of pages. We then used our experience, creativity and skill to write a CE lesson using these publicly available documents. The result is this CE program that you are reading. We hope you enjoy it and learn from it.

Does this mean that the law and rule cited in this CE program becomes, somehow, “owned” by Ohio Nursing Law? No. Does it mean that the disciplinary cases we explain and discuss in this CE program become “owned” by Ohio Nursing Law? No, of course not.

But the selection of these cases from all of the available cases, the explanation, discussion, format, questions, and all other aspects of this CE program are what

is called the “intellectual property” of Ohio Nursing Law. In the same way as if we had created a song, or wrote a book, or drew a sketch, the underlying topics or facts are not owned by us, but the resultant piece of work is indeed owned by us here at Ohio Nursing Law as the creator of the piece.

And so, for all the nursing schools, hospital educators and others who think they can “lift” this work product of Ohio Nursing Law and use it as assigned reading or as their own CE lesson, they cannot. We consider it theft of Ohio Nursing Law’s intellectual property, the same as if the institution or educator had stolen a textbook, unless the institution or educator submits payment for each nurse. If your institution wishes to use the material in this program but does not wish to submit payment for it, then the institution’s nurse educator can work through the process described above to obtain disciplinary cases from the Board of Nursing.

Really, it is fun to read cases at the Board of Nursing. The staff of the Board are very nice, the reading is quite interesting, and no matter how much one thinks they know about the practice of nursing, there is always something new to learn from a visit to the Board.

Does the “Fair Use” Doctrine Let an Institution “Lift” This CE Program?

But wait, you say. Surely a nurse educator can use this CE program at an in-service. Isn’t that “fair use” of education material? While only a court can answer this with certainty, we believe the answer is “no, not unless you make the payment of \$15 per nurse.”

Section 107 of the 1976 Copyright Act states that “the fair use of a copyrighted work...for purposes such as criticism, comment, news reporting, teaching..., scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include —

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

A court will use a balancing test of these 4 above factors to determine whether another person’s use of our CE program is protected by the “fair use” doctrine. The last time the U.S. Supreme Court used these 4 factors in a “fair use” balancing test was in 1994, when Roy Orbison’s record company sued the members of the rap music group 2 Live Crew, claiming that 2 Live Crew’s song “Pretty Woman” infringed on Roy Orbison’s rock ballad “Oh Pretty Woman.”

In its decision, the Supreme Court explains that a use that is **transformative in nature** is particularly worthy of the mantle of fair use protection. In this respect the Court stated: “Although such transformative use is not absolutely necessary for a finding of fair use, the goal of copyright, to promote science and the arts, is generally furthered by the creation of transformative works. Such works thus lie at the heart of the fair use doctrine’s guarantee of breathing space within the confines of copyright, and the more transformative the new work, the less will be the significance of other factors....” Campbell v. Acuff-Rose Music, Inc., 510 U.S. 569, 114 S.Ct. 1164 (1994).

The Power of the Board of Nursing to Discipline Nurses

Ok, now back to Ohio’s laws regarding discipline of nurses.

In Ohio, the Ohio Revised Code (ORC) is known as the “statute” and the Ohio Administrative Code (OAC) is known as the “administrative rules”. Both of these, along with case law that is created in courtrooms and federal law that applies across the country, combine to form “the law” in Ohio.

The ORC gives the Board of Nursing the obligation to discipline nurses:

ORC 4723.06 Board of nursing - powers and duties.

(A) The board of nursing shall:

(1) Administer and enforce the provisions of this chapter, including the **taking of disciplinary action for violations of section 4723.28** of the Revised Code, any other provisions of this chapter, or rules adopted under this chapter;

What is section 4723.28 of the Revised Code? It is portion of the statute that permits the Board of Nursing to A) refuse a license if the applicant lies on the application, and B) discipline a person who holds a license to practice nursing:

ORC 4723.28 Disciplinary Actions

A) The board of nursing, by a vote of a quorum, may revoke or may refuse to grant a nursing license, certificate of authority, or dialysis technician certificate to a person found by the board to have committed fraud in passing an examination required to obtain the license, certificate of authority, or dialysis technician certificate or to have committed fraud, misrepresentation, or deception in applying for or securing any nursing license, certificate of authority, or dialysis technician certificate issued by the board.

(B) Subject to division (N) of this section, the board of nursing, by a vote of a quorum, may impose one or more of the following sanctions: deny, revoke, suspend, or place restrictions on any nursing license, certificate of authority, or dialysis technician certificate issued by the board; reprimand or otherwise discipline a holder of a nursing license, certificate of authority, or dialysis technician certificate; or impose a fine of not more than five hundred dollars per violation. The sanctions may be imposed for any of the following:

[The statute then lists 33 reasons that the Board may impose discipline. We will list a few of them in an abbreviated format here:]

- (3) Conviction of...a misdemeanor committed in the course of practice;
- (4) Conviction of any crime...involving gross immorality or moral turpitude;
- (5) Selling, giving away, or administering drugs or therapeutic devices for other than legal and legitimate therapeutic purposes...;
- (9) Habitual indulgence in the use of controlled substances, other habit-forming drugs, or alcohol or other chemical substances to an extent that impairs ability to practice;
- (25) Failure to comply with the terms and conditions of participation in the chemical dependency monitoring program established under section 4723.35 of the Revised Code;
- (31) Failure to establish and maintain professional boundaries with a patient, as specified in rules adopted under section 4723.07 of the Revised Code;
- (33) Assisting suicide as defined in section 3795.01 of the Revised Code.

We could do a whole lesson on the 33 listed areas for which a nurse, dialysis technician or community health worker can be sanctioned or disciplined. The point here is that, even though you do not think about it in daily practice, there are laws and rules that apply to your actions as a nurse. If you fail to follow those laws or rules, then discipline against your license can result.

Question 10:

If you receive probation from the Board of Nursing, the purpose of the probationary terms and conditions is to:

- a) embarrass the nurse so s/he never does wrong again;
- b) make it harder for the nurse to find a job;
- c) protect the public.

Question 11:

A patient complains to the Board of Nursing that while in the hospital, his nurse repeatedly failed to bring him his pain medication on time. While we don't know for sure what the Board will do, one likely outcome based on the cases you have read is:

- a) the Board will do nothing, because patients complain about late pain meds all the time;
- b) the Board will investigate and, if there are no other relevant circumstances, the Board will likely place the nurse on probation;
- c) the Board will revoke the nurse's license.

Question 12:

The patient in Question 11 above adds to his complaint, saying that when the nurse brought him his pain medication, she often said her wages were too low and she needs \$5 from him for each dose he gets. He paid her, but he still did not get his pills. While we don't know for sure what the Board will do, one likely outcome based on the cases you have read is:

- a) the Board will do nothing, because the patient is fine now;
- b) the Board will investigate and, if there are no other relevant circumstances, the Board will likely place the nurse on probation;
- c) the Board will investigate, and, if the facts are found to be true, likely revoke the nurse's license.

Return this ANSWER SHEET and \$15.00 Program Fee to:

OHIO NURSING LAW
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ANSWER SHEET – 2009-2010 Ohio Nursing Law Program – Disciplinary Cases
(Expires March 2, 2011)

- | | | | | | | | | |
|----|---|---|---|--|-----|---|---|---|
| 1. | a | b | c | | 7. | a | b | c |
| 2. | a | b | c | | 8. | a | b | |
| 3. | a | b | c | | 9. | a | b | |
| 4. | a | b | | | 10. | a | b | c |
| 5. | a | b | c | | 11. | a | b | c |
| 6. | a | b | c | | 12. | a | b | c |

EVALUATION

This program met its stated objective of helping me to identify situations where nursing behavior has broken a rule or law related to the practice of nursing in Ohio and as a result the Ohio nurse received Board-imposed discipline, and then apply this information to new situations: Yes No

The content that I read in this course program was relevant : Yes No

I like this home-study method of learning: Yes No

I can apply what I have learned in this program to my practice: Yes No

How long did it take to read the Program, and complete the Answer Sheet? _____

We love comments! _____

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