



LEGAL SCOPE OF ADVANCED NURSING PRACTICE

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Introduction

Nurses, like all healthcare professionals, must act within the scope of practice as outlined in statutes and regulations. Failure to comply with this by exceeding the permissible scope of practice could result in professional discipline or even criminal prosecution. Advanced practice nurses (e.g., clinical nurse specialists, nurse anesthetists, nurse midwives, or nurse practitioners) frequently encounter issues related to the scope of their practice.

These issues may arise as part of the individual nurse's ethical and professional concern or as a result of professional "friction" between nursing and other healthcare professions. This is especially so when the advanced practice nurse's scope overlaps with areas that have traditionally been viewed as the practice of medicine. Regardless of what may trigger such concerns, it is imperative that advanced practice nurses and practice managers know how to ascertain what is and is not part of their scope of practice and what actions they may need to take to be in compliance with the applicable law or regulation. Clear understanding of one's scope of practice can lead to enhanced collaboration among professionals, decreased professional tension, and more effective provision of health care in clinical settings.

Two key questions emerge when considering the issue of advanced practice nursing and scopes of practice. The first is the extent of what one, by virtue of being an advanced practice nurse, can do. Thus, the advanced practice nurse—or perhaps the clinical manager of a setting in which the advanced practice nurse is working or a collaborating physician—wants to know the duties an advanced practice nurse may legally perform. Second, one must understand what constitutes the outer boundaries of a clinician's

scope of practice. For example, one must know if there needs to be a supervisory relationship and, if so, of what nature and how it should be documented.

Of course, it would be wonderful if those answers were always clear, concise, and readily available. Although that may occasionally be the case, it is not the rule. As such, this chapter outlines for advanced practice nurses and those responsible for the management of advanced nursing practice in the clinical setting how to approach these questions and where to begin to find that information necessary to properly understand the limits of one's scope of practice and what steps need to be taken to ensure that one's practice is consistent with the appropriate legal framework.

In a number of states (including the jurisdictions of Puerto Rico and Washington, DC), it is necessary for nurses to develop written documentation to support their expanded practice. Different states use different terms to describe these documents and require different specific elements be addressed. In most cases, the specific requirements for each state can be found in statutes or regulations, as discussed later. An explanation of practice guidelines, such as *Standardized Procedures* that are used in California, can be viewed at <http://www.rn.ca.gov/pdfs/regulations/npr-b-20.pdf>

Overview of Scope of Practice Legal Framework

State Regulation of Professional Practice

Control of the scope of practice of healthcare professionals rests at the level of state government. Although there are some areas of professional practice—including those relating to the advanced practice nursing roles—for which federal regulations have an impact, the basic definitions and limits of professional practice are determined at the state level.

This can sometimes lead to confusion. For example, some federal regulations dealing with reimbursement requirements for federally funded programs, such as Medicare and Medicaid, do address what can or should be done by advanced practice nurses. One such example is found in the Medicare Conditions of Participation for Rural Health Clinics (2010).¹ The regulations require that participating rural health clinic staff include one or more physician assistant or nurse practitioner. They further require that the physician assistant or nurse practitioner work with the physician on staff to develop and review clinic policies.

However, although compliance with these federal regulations is required for reimbursement for services, the individual healthcare

¹ 42 CFR 491 et seq (This citation is to the Code of Federal Regulations. This particular chapter of the code addresses the regulations applied to healthcare providers who participate in the Medicare Program. These regulations can be accessed from the website of the Centers for Medicare and Medicaid, found at: www.cms.hhs.gov)

practitioner's practice is directly regulated by the state in which she or he is licensed to practice. Thus, although the Medicare Conditions of Participation may not require that advanced practice nurses work with physicians in these settings, the rules governing who can become a nurse practitioner and what scope of practice the person has are set by the individual states and are subject to significant variation from state to state.

■ Sources: Statutes

There are several sources of authority for the regulation of professional practice within states (and other jurisdictions within the United States). The most basic and important of these are statutes. Statutes are laws or acts passed by the legislative body of a particular jurisdiction. As such, statutes represent the voice of the people's elected representatives with regard to permissible activities.

Each state enacts a professional practice act addressing the specific health professions within the jurisdiction. In general, these statutes define the training requirements of healthcare professionals and what behaviors are allowed in the practice of the profession. For example, the State of California sets the basic legal framework for the practice of nursing in its Business and Professions Code (Nursing Practice Act, 2008). Similarly, the provisions for the practice of medicine, physical therapy, dentistry, and so forth are found in other sections of the Business and Professions Code.

Although not universally the case, most of these laws—known as practice acts—are relatively easy to locate. Most states have some board or agency charged with the regulation of each of the specific healthcare professions. Using California as an example, the statutes governing the practice of nursing authorize the Board of Registered Nursing to manage the practice of nursing within California. This state agency has a website (<http://www.rn.ca.gov>) on which it makes available links to the specific statutes relating to the practice of nursing within California (California Board of Registered Nursing, 2010c). An interactive list allowing one to link to boards of registered nursing throughout the country can be found at the website of the National Council of State Boards of Nursing (<https://www.ncsbn.org/515.htm>).

When looking at state statutes to understand issues relating to scope of practice it should be kept in mind that statutes may be written in fairly general and expansive language rather than in point-by-point specifics. One can think of the statutes as setting out the broad parameters of a professional practice without spelling out each particular specific aspect of the practice. Examples of the broad language include this excerpt from the Washington State statute defining advanced practice nursing:

“Advanced registered nursing practice” means the performance of the acts of a registered nurse and the performance of an expanded role in providing healthcare services as recognized by the medical and nursing professions, the scope of which is defined by rule by the commission. Upon approval by the commission, an advanced registered nurse practitioner may prescribe legend drugs and controlled substances contained in

Schedule V of the Uniform Controlled Substances Act, chapter 69.50 RCW, and Schedules II through IV subject to RCW 18.79.240(1) (r) or (s).

Nothing in this section prohibits a person from practicing a profession for which a license has been issued under the laws of this state or specifically authorized by any other law of the state of Washington.

This section does not prohibit (1) the nursing care of the sick, without compensation, by an unlicensed person who does not hold himself or herself out to be an advanced registered nurse practitioner, or (2) the practice of registered nursing by a licensed registered nurse or the practice of licensed practical nursing by a licensed practical nurse (Revised Code of Washington, 2009).

■ Sources: Regulations

Another authority for the control of advanced nursing practice can be found in regulations, which like statutes have the force of law. Regulations are not the result of the legislative process but, rather, rules or orders issued by an arm of government, such as a particular agency.

The process of developing regulations typically involves those who have particular expertise in an area drawing up specific rules, making them available for public comment, and then promulgating or issuing them publicly.

Because regulations are often developed by the agency or arm of government closest to the actual profession, they often are more detailed and specific than statutes. Regulations often spell out the details of how to implement the vision of the legislature as stated in the statutes.

State health boards often provide links to scope of practice regulations. However, it is easier to find these links in some states than in others. Should it be difficult to find a direct link to an individual state's law and regulations, the reader may choose to do an Internet search on such terms as “advanced practice nursing statutes” or “nursing regulations” and the particular state's name. Should this not help, one could always call the particular licensing agency and ask how to access the statutes and regulations governing nursing or the specific aspect of advanced practice nursing in which one is interested.

Like statutes, regulations are readily available to the public. For example, in California, regulations addressing the practice of nursing are found in the California Code of Regulations. Regulations in Title 16 address specifics relating to the practice of health professions, whereas those in Title 22 regulate how health care is provided in licensed institutions. Both require specific language. An example is the regulation describing what must appear in a “standardized procedure” document, required to allow registered nurses to practice beyond their usual scope of practice.

The website of a particular state's agency charged with the regulation of healthcare professionals often has links to the state regulations surrounding a particular profession available on that website.

For example, the Commonwealth of Massachusetts Board of Registration in Nursing has its website as part of the larger Health and Human Services Agency's section of the state government website (www.mass.gov). Under "Nursing," one can choose the link to "Statutes, Rules and Regulations" (Commonwealth of Massachusetts, 2010).

■ *Sources: Statements of Regulatory Agencies*

Unfortunately, even a thorough reading and analysis of all pertinent statutes and regulations may not yield a definitive answer to all questions regarding one's scope of practice. The issue at question may be complex enough that a simple answer may not be available in the statutes and regulations. For example, it may not be precisely clear what an advanced practice nurse may do in a very specific clinical setting under specific circumstances.

When this is the case, the governing body (e.g., Board of Registered Nursing) may issue an advisory statement or some sort of information addressing the specific concern. These statements can be extremely helpful in allowing clinical practices and individual practitioners to understand what is permissible or required in a particular circumstance.

For example, the California Board of Registered Nursing makes multiple documents and sources of information about these issues available on its website (California Board of Registered Nursing, 2010b). Among the documents listed, the Board has made available a statement helping to explain the statutes and regulations in regard to the roles of nurse practitioners and certified nurse specialists working in long-term care settings (California Board of Registered Nursing, 2010a).

Although this kind of statement can be extremely helpful in understanding the complexities of the statutes and regulations, it does not of itself have the force of law. Even so, should a practice issue ever come to the point of being litigated, courts may be inclined to give deference to the statement of specific regulatory agencies.

■ *Sources: Attorney General Opinions*

In some circumstances, issues are very complex and even contentious. Sometimes these situations result in an agency or some member of government seeking an official opinion from the State's Attorney General to clarify issues. This may often be the case when there has been substantial change in existing statutes and regulations that has led to confusion or even turf battles.

One example of this can be found in an opinion of the Michigan Attorney General (1980) about the ability of physicians to grant "unlimited authority" to advanced practice nurses to prescribe medications. One can see in reading this opinion the evolution of Michigan law that led to confusion about just how much authority may be delegated and under what circumstances.

In this example, a member of the State Legislature asked the Attorney General to issue an opinion. As is often the case, the opinion carefully lays out what the issues are and what the history

has been that has led to the question. Then, the Attorney General issues an opinion as to how she or he understands the law.

Like the statements of the regulatory agencies, an Attorney General's opinion does not carry the force of law. That is to say, such an opinion does not necessarily fully resolve the issue at controversy. However, courts routinely grant "great respect" or "great weight" to the opinions of attorneys general in cases that come before them. Thus, such opinions often have the power to effectively resolve a particular issue within a jurisdiction.

■ *Sources: Statements of Professional Organizations*

Professional organizations that represent the interest of advanced practice nurses may issue statements or information about a particular topic related to scope of practice. As with the other opinions cited here, these opinions or statements, although often very helpful, do not carry the force of law. One thing to keep in mind is that often these statements may be issued by the organization in its role as an advocate for the particular profession or advanced practice role.

A particularly helpful service offered by many professional organizations is a regular legislative update. These updates often review legislation that has been passed or proposed within a year and that impacts the particular area of practice covered by the organization.

These updates, rather than clarify specific issues, are intended to inform readers of new laws and regulations and potential trends within the states. For example, a 2009 report in *Advance for Nurse Practitioners* reports on the failure of two bills introduced in Connecticut to remove a mandatory collaborative agreement and the pledge of a legislator to continue efforts toward that end in the future (Ford, 2009).

■ *Other Sources*

There are other sources available to help understand scope of practice issues as they relate to advanced practice nursing. Two deserve at least a brief mention as part of this discussion.

The Center for the Health Professions is part of the University of California, San Francisco. The Center engages in numerous activities to improve health care through research and development projects. Among their efforts has been research into scope of practice of health professionals. Their publication of an "Overview of Nurse Practitioner Scopes of Practice in the United States—Discussion" is a very valuable tool for understanding the state of scope of practice regulation and for accessing particular information (Christian, Dower, & O'Neill, 2007).

Another valuable tool is a textbook devoted to issues relating to nurse practitioner practice and legal issues. Carolyn Buppert's (2008) *Nurse Practitioner's Business Practice and Legal Guide* addresses, among other topics, specifics about state regulation of nurse practitioner practice. It is hoped that this discussion orients advanced practice nurses to the resources for determining and understanding their particular scope of practice.

Issues Related to Collaborative Practice and Documentation

Once the advanced practice nurse has been able to identify the resources for understanding scope of practice it is imperative to determine the level of independence with which she or he can practice and the level of collaboration that is required by her or his jurisdiction. Furthermore, if there are requirements related to collaborative practice, one needs to be able to determine how to meet and appropriately document those requirements.

It has been widely noted that there is significant disparity in the terminology used to describe advanced practice nursing. For example, statutory language describing the nature of the required relationship between advanced practice nurses and physicians can include such terms as “supervise,” “collaboration with,” “delegate,” and even “collegial working relationship” (Ritter & Hansen-Turton, 2008). Furthermore, we have already seen that the nature of this relationship can lead—as it did in Michigan—to repeated changes in legislation and regulation that, in the end, required an Attorney General Opinion to sort it out.

Although not a comprehensive list, the following issues are offered as a guide for understanding the possible requirements and methods of documenting compliance. The practitioner should consider each of these areas when attempting to set up practice or understand the extent of their scope of practice.

Fully Independent Practice

As of 2007, 11 states allowed nurse practitioners to practice independently of physicians. That is, in such states the nurse practitioner is permitted to diagnose, treat, and prescribe medications without supervision by or collaboration with a physician. Alaska, Oregon, and Washington are examples of states that have this kind of broad scope of practice.

Some Collaboration, Supervision, or Delegation Required

Most states require documentation of some sort of relationship with physician colleagues for the advanced practice nurse to practice within that scope of practice. The nature of the “collaboration,” “supervision,” or “delegation” may vary significantly from state to state.

Many states with this kind of requirement also require that there be a written agreement that sets forth the terms under which this relationship is defined. California’s requirement of standardized procedures is an example of this need.

Collaborative or Supervisory Agreement Necessary for the Advanced Practice Nurse to Prescribe Medications In Most States

Apart from the other elements of advanced practice nursing, such as diagnosis, ordering of diagnostic tests, and ordering of treatments, the issue of prescribing medications can be

particularly difficult. The history of political and legislative difficulties in approaching this issue has been well documented elsewhere. The key issue here is that the advanced practice nurse wishing to have prescribing as part of her or his practice needs to be sure that all particular scope of practice requirements are met.

In some states, advanced practice nurses must sign prescriptive agreements to prescribe, order, or furnish drugs. An example of this is found in the Minnesota legal framework, which allows for advanced practice without a written agreement but requires one for the advanced practice nurse to be able to prescribe (Public Health Occupations, 2006a and 2006b).

Precise Nature of the Supervision or Collaboration Required

In situations in which a supervisory or collaborative relationship is required, advanced practice nurses need to understand the precise nature of what is required. Furthermore, when that relationship requires documentation, as in a collaborative practice agreement or a standardized procedure, the nature of the relationship should be spelled out in the agreement.

State regulations may spell out what needs to be included in such an agreement and can be very helpful in drafting such an agreement. North Carolina’s regulations are an example of how one can find excellent guidance in translating the statutes and the regulations into a workable document (North Carolina Board of Nursing, 2010). Issues that may arise or need to be documented properly include the following:

1. On-site supervision requirements: Only a few jurisdictions require that a physician supervisor be physically present. When practicing in those states, advanced practice nurses should be aware of and document regulations relating to:
 - ▶ Length of time (i.e., percentage of working day) that the supervisor must be on-site
 - ▶ What precisely constitutes “on-site” within that jurisdiction
 - ▶ Whether there exists any exemption or modified requirements for working in a particular area, such as remote rural setting or medically underserved setting.
2. Chart review: A small number of jurisdictions require some level of advanced practice nurse chart review by collaborating physicians. In those states, attention should be paid to:
 - ▶ The precise number or percentage of charts required to be reviewed in a specific period of time.
 - ▶ What constitutes a need for review and how it is to be documented.
 - ▶ Whether there is a particular type of chart (e.g., one involving an adverse outcome) that requires review.
3. Limitations on oversight for the collaborating physician.

In jurisdictions and settings that require some sort of physician oversight, the question necessarily arises as to how many practitioners may be supervised by a particular physician. These issues may arise in terms of the number of nurse practitioners with whom a

physician may enter into a collaborative relationship, the number of individual practitioners that may be supervised at one time in an on-site situation, and other settings. For example, the question arises in those jurisdictions that require anesthesiologist supervision of certified nurse anesthetists.

Advanced practice nurses and those physicians with whom they enter into collaborative relationships should be clear about the specific limitations and requirements of the oversight required. In those jurisdictions and situations that require documentation of this relationship, it should be made clear in the practice agreement how many individuals are to be supervised and in what manner.

Concluding Remarks

From this discussion, the reader should appreciate three important themes about the legal scope of advanced nursing practice and clinical guidelines:

1. The advanced practice nurse must have a thorough understanding of the respective state's nurse practice act. There are several sources that provide context for one's professional scope of practice.
2. The advanced practice nurse must be able to clearly communicate with other registered nurses, physicians, healthcare administrators, and healthcare consumers their scope of nursing practice.
3. The advanced practice nurse must communicate, often in writing, the legal scope of their practice in a clear, concise, and flexible manner that is in keeping with regulatory law and community standards.

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