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Advisory Committee on Advanced Practice Registered Nursing

Meeting Minutes
October 2, 2017, 10:00 a.m.

Members Attending: Erin Keels; Latina Brooks; James Furstein; Christopher Kalinyak (left at 2:41 p.m.); Candy Rinehart; Kristine A. Scordo; Sandra Wright-Esber; Michelle Zamudio (arrived at 10:20 a.m.)

Members Absent: None

Board Members Attending: Patricia Sharpnack; Lisa Klenke; Erin Keels (Committee Member)

Staff Attending: Betsy Houchen; Lisa Emrich; Anita DiPasquale; Holly Fischer (part of the meeting); Tom Dilling; Chantelle Coles-Neal; Margo Pettis

Guests Attending: Andrew W. Herf, Shumaker Advisors Ohio, LLC; Kelly Leahy, Shumaker, Loop & Kendrick, LLP; Brian Garrett, Ohio State Association of Nurse Anesthetists; Pete Dipiazza, APRN; Karin Grant, APRN; Keeley Harding, APRN; Tiffany Bukoffsky, Ohio Nurses Association; Scott Rowley, APRN; Jennifer Kosla, APRN; Robin Rosselet, APRN; Aaron Begue, APRN; Mary Jane Maloney, OAAPN; Willa Ebersole, Pappas & Associates; Mark Altier, State of Ohio Auditor's office.

Call to Order and Welcome

Erin Keels, Acting Chair, called the meeting to order at 10:00 a.m. and welcomed members and guests. Those in attendance introduced themselves. E. Keels stated that if anyone wanted to make public comments, there was time allotted on the agenda at the end of the meeting and she asked that they complete a Speaker's Slip.

Rule 4723-9-10, OAC, Standards for Prescribing

Holly Fischer, Chief Legal Counsel, presented background information regarding Rule 4723-9-10, OAC. The Nursing, Medical, Pharmacy and Dental Boards, in conjunction with the Governor's Office, implemented acute pain rules to establish requirements for treatment of acute pain with opioid analgesics. The rules limit opioid analgesic prescriptions for adults to seven days, not to exceed an average of a thirty morphine equivalent dose (30 MED) per day over the course of the seven days. She explained that an exception was included in the Medical Board rule, Rule 4731-11-13, OAC, that authorizes the "treating physician" to exceed the 30 MED per day average for patients with amputations, crushing tissue and bone injuries, major orthopedic surgeries, and severe burns. The rules were effective August 31, 2017.

In September, the Board received emails from APRNs that physician assistants (PAs) could also write prescriptions that exceeded the 30 MED average. The Nursing Board was previously unaware of this, and then confirmed that the Medical Board interpreted Rule 4731-11-13 to include PAs because physicians, through a supervisory agreement mandated by Ohio law, agreed to legal liability for the PA's prescribing practice.

Upon confirmation, the Board immediately pursued an agreement with state government stakeholders so that the same exception would apply to APRNs. An agreement was reached the evening of September 12, 2017 and presented to the Board the next morning on September 13, 2017 at the Board meeting. The Board agreed to the revision and directed staff to file the rule with the 30 MED average exception for prescribing APRNs.

H. Fischer explained that the proposed rule would authorize prescribing APRNs to exceed the 30 MED daily average for the same limited conditions that are specified in the Medical Board rule. The language also requires that the standard care arrangement (SCA) between the APRN and the patient's treating physician acknowledge that according to Medical Board Rule 4731-11-13, the treating physician remains singularly accountable for the determination to exceed the 30 MED average. The APRN is responsible for documenting the patient's condition, the rationale for exceeding the 30 MED, and the dosage in the patient record.

H. Fischer indicated that the Board voted at the September meeting to file the rule with the proposed 30 MED expansion language in October. The Committee could recommend to the Board that following the rule filing, the Board: (1) withdraw the proposed rule amendment; (2) proceed with the rule as proposed; or (3) recommend additional revisions to the rule, which would require a revised rule filing following the November 15 rule hearing. H. Fischer noted that if the rule is revised, the language must conform to the Medical Board rule language because APRNs are required to comply with Ohio prescribing law and rules.

Sandy Wright-Esber stated she believes the use of "treating physician" is confusing and asked who is the treating physician. She noted "collaborating physician" is defined and widely used. She stated that in practice APRNs are the treating provider, without regulation and supervision. The added supervision is unjustifiable when there is a lack of evidence to suggest that APRNs have prescribed inappropriately. She believes the proposed rule will restrict APRN practice and hinder a patient's access to needed medication. She suggested the language be "treating provider" rather than treating physician.

H. Fischer stated that APRNs practice in accordance with the Nurse Practice Act (NPA), which imposes regulatory requirements for APRNs to practice with physician collaboration, SCAs, and following other Ohio applicable law and rules. L. Emrich stated that while some APRNs believe the proposed rule would require them to be supervised and they see this as a backward step for APRNs, the word supervision is not in the rule and it is not required by the rule. L. Emrich also stated that the NPA requires APRNs to prescribe Schedule II controlled substances consistent with statutory and regulatory limitations and within the parameters established in the SCA.

H. Fischer stated that the Board's action was to expand the APRN's ability to prescribe for acute pain, similar to the PA's ability, not to restrict APRN practice. When the Board learned the exception applied to PAs and not APRNs, the Board believed if the Board did not propose to revise the rule immediately, APRN practice would be restricted and that patient care would be negatively impacted.

She stated the rules were drafted in collaboration with multiple boards and the Governor's Task Force. Because of the opioid epidemic, the Governor's Task Force was reluctant to allow any exception to the 30 MED average, but agreed to the exception only if the treating physician was the person who made the decision and would be held singularly accountable. To authorize prescribing APRNs to have the 30 MED average exception, these parameters, as already established in the Medical Board rule had to be accepted. To be consistent with the Medical Board rule, the Nursing Board rule must refer to the collaborating physician and the SCA, because there is no supervisory physician for APRNs as there is for PAs.

Because the Medical Board Rule specifies it is the "treating physician" who is "singularly accountable," or ultimately responsible, the Nursing Board does not have the authority to change the Medical Board's language; this is why the Nursing Board rule uses the language treating physician and singularly accountable. The treating physician must be a collaborating physician for the APRN to be able to exceed the 30 MED per day average limit.

L. Brooks stated there would be difficulties in operationalizing the rule in daily practice because in large hospitals treating physicians may be different physicians than the collaborating physicians. S. Wright-Esber stated that PAs add long lists of treating physicians to their supervisory agreements and it was noted that treating physicians could be added to APRNs' list of collaborating physicians.

Candy Reinhart requested a copy of the Pharmacy Board rule, Rule 4729-5-30 regarding the manner of issuance of a prescription, to compare with the Nursing Board rule. All members were provided a copy of the rule. She asked why the Nursing Board rule used treating physician and did not use provider neutral language like the Pharmacy Board did. She stated that the language in the Nursing Board rule would be problematic for APRN practice.

L. Emrich stated that the Pharmacy Board rule uses the neutral term "prescriber" because their rule refers to all types of prescribers, any person who has the authority to prescribe in Ohio. The Pharmacy Board rule establishes requirements for how prescribers write prescriptions, for example, what prescribers are required to include on the prescription. Each Board that regulates prescribers adopts rules that govern the prescribers the Board is authorized to regulate. The Pharmacy Board is not authorized to regulate the practice of nurse, physician, PA, or dental prescribers.

Christopher Kalinyak stated that he works in a drug and alcohol rehabilitation facility and the majority of the individuals being treated claim their addiction stemmed from a prescribed opioid. He stated he believes that physician prescribing significantly contributed to the opioid epidemic, yet the Board of Nursing is expected to adopt and enforce rules that impact prescribing APRNs. He stated he is concerned that the language of the rule is a setback for APRNs.

Michelle Zamudio responded that her concern is the fallout of the rule because rarely is one singular physician treating an acute pain patient. A SCA with all providers may not be possible, and could lead to chaos. She questioned if the Committee could add language or an addendum to include "treating APRNs" or could clarify additional or primary prescribers.

H. Fischer reiterated that under current Ohio law, prescribing APRNs cannot exceed the 30 MED daily average. This is a proposed expansion of practice for APRNs, without contravening the Medical Board rule. Director Houchen explained that the rules are to address the opioid epidemic and establish accountability for the physician. Tom Dilling explained the timeline of the original rules adopted by the various boards was for them to be effective August 31, 2017. The language is the subject of all involved collaborative entities, not specifically APRNs. It is understood that multiple providers are involved with patient treatment and the term "singularly accountable" establishes heightened responsibility.

E. Keels asked H. Fischer if the singularly accountable language needed to mirror the Medical Board rules and set forth the liability as established in the Medical Board rule. H. Fischer confirmed that this is correct. E. Keels summarized the possible options and asked the Committee members how they would like to proceed.

Committee members asked H. Fischer questions about the options. H. Fischer stated the rule would be filed as proposed on or around October 11, 2017, because at the September meeting the Board directed staff to file the rule. She summarized the options; the Committee could recommend:

- Proceed with the proposed rule as written. It is anticipated the rule could be effective January 1, 2018.
- Revise the language. The Board would consider the recommended revision language at the November Board meeting.
    - The Board may not accept any proposed revision and direct the rule be final filed as written, and the rule could be effective January 1, 2018.

    - The Board may accept a recommendation for revision.
        - If the revisions are minor modifications that are legally consistent with Medical Board rule, the rule may still be effective January 1, 2018. The Board would revise file the rule that includes the Committee's recommended language.

        - If the Committee's recommended revisions are major changes in the language filing, it is anticipated the Board would re-initiate the collaborative process with the Governor's Task Force and the process could start again. The proposed rule

would be withdrawn and the rule, as effective August 31, 2017 will continue to be in effect until such time an agreement might be developed.

- Withdraw the proposed rule and the rule, as effective August 31, 2017, would continue to be in effect.

Kristine Scordo reminded the Committee the importance of including APRNs in the narrow prescribing exception for the sake of patient care. She believes revising the language further can be evaluated at a later date.

S. Wright-Esber stated she does not favor the current language, but APRNs must be able to provide the best available treatment for patient care. She stated she continues to see the rule as a setback for APRNs following the success of HB 216, and the expressed concerns of the Committee need to be shared with other state boards. Additionally, she asked for the state to establish and provide to APRNs alternative therapies for pain management to assist in addressing the opioid epidemic.

C. Reinhart disagreed with approving the proposed rule as written simply for the purpose of allowing APRNs to have the 30 MED average exception. She stated the language is too confusing and restrictive. As a result, APRNs will choose not to write the prescription, which will delay patients' discharges. Without a clear definition of treating physician, she believes the term cannot be used or implemented.

Lisa Klenke stated the language in the Medical Board Rule is trying to establish one provider as responsible and accountable for the decision to exceed the 30 MED average and narrow the possibility of multiple individuals prescribing to one patient. The Nursing Board is sensitive to the fact that the language is not perfect, but if the rule is withdrawn completely the process starts over.

C. Reinhart moved that the Committee recommend to the Board of Nursing to revise the language in the APRN acute pain rule, in particular, removing the "treating physician" and "singularly accountable" verbiage used in the present suggested rule. K. Scordo seconded the motion.

The Committee discussed the motion, the need for clarity, and removal of treating physician and singularly accountable. H. Fisher encouraged the Committee to identify the new language to recommend to the Board.

E. Keels moved to amend the motion to recommend that the Board strike the following in sentence two of 4723-9-10(J)(3)(c)(ii): "The standard care arrangement in this circumstance must state that the treating physician remains singularly accountable for all prescriptions issued by the advanced practice registered nurse that exceed the thirty MED average" and insert in its place: "The standard care arrangement must comply with rule 4731-11-13 of the Administrative Code". K. Scordo seconded the amended motion. The Committee voted on the amended motion by a show of hands. With C. Reinhart and S. Wright-Esber voting no, the motion passed with by a majority of six votes.

The Advisory Committee also recommended that the Board seek clarification in some form from the Medical Board as to the meaning of "treating physician" and "prescribing physician," as referenced in Rule 4731-11-13.

C. Reinhart asked whether the Committee should convene before the November 15-16, 2017 Board meeting to review the acute pain rule language again. Director Houchen explained calling a Special Meeting is an option as long as the Committee complies with the Open Meetings Act. The Committee discussed the need to meet and members were in general consensus that since the Committee has recommended specific language additional discussion is not needed, and no meeting would be held prior to the November Board meeting or prior to the next scheduled Committee meeting on January 29, 2018.

S. Wright-Esber commented that she believes it would have been better if the Committee had reviewed the acute pain rule prior to the September Board meeting. Director Houchen stated that the actual timeline did not allow for a Special Meeting of the Advisory Committee to be called; language was drafted at approximately 6:00 p.m. the evening before the 8:30 a.m. Board meeting. The day immediately

following the Board meeting, the Board emailed the APRN Advisory Committee, the Committee on Prescriptive Governance and interested parties in order to communicate about the rule and the rationale for the proposed revisions.

President Sharpnack stated that she hoped Committee members and APRNs realize that Board staff immediately notified her upon learning of the exception for PAs and recommended the Board pursue an agreement with the state governmental stakeholders that the same exception apply to APRNs. She stated that staff worked quickly on behalf of APRNs and had to work with the language already established by the Medical Board to assure that APRN practice would not circumvent other state law and rules, but prescribers could prescribe according to the exception.

Ohio Ethics Commission/Ethics Law

Director Houchen referred to the copy of the Ohio Ethics Law and Related Statutes, including contact information for the Ohio Ethics Commission, which was provided to each Committee member. She requested that each member sign and return the form to confirm receipt of the documents. H. Fischer stated that if a Committee member holds a leadership or officer position with an outside entity that is composed of members regulated by the Board, it is recommended the Committee member contact the Ethics Commission to consult regarding whether the position creates a conflict of interest with the member's Committee position.

C. Reinhart stated that she believes the application for membership on the APRN Advisory Committee contained information about individuals' affiliations so the Board would have the information. Director Houchen stated that individuals may have included the information on the application, but the application was not designed to solicit individuals' affiliations/positions with associations for the purpose of a review of potential conflicts; the application is used only to determine if individuals meet the qualifications, as established by HB 216 and Board policy, to be considered for membership. It was emphasized that obtaining an opinion is the responsibility of each Advisory Committee member, as needed, not Board staff.

Training: Open Meetings Act (State Auditor)

Mark Altier, Chief Legal Counsel for the State of Ohio Auditor's Office, presented training on the Open Meetings Act, Section 121.22, Ohio Revised Code. S. Wright-Esber asked about emailing other members of the Committee regarding agenda items. M. Altier responded that emailing for the purpose of adding items to the agenda could be acceptable, however, members should not to discuss business or items on the agenda through emails or phone calls, as that could be viewed as holding a "round robin discussion," which is prohibited by the Open Meetings Act.

Medication Assisted Treatment/CARA 2016

L. Emrich summarized CARA 2016, a federal law that expanded the authority to provide Medication Assisted Treatment (MAT) to "nurse practitioners" and PAs who complete SAMHSA training and obtain a DATA-waiver from the DEA. The Board questioned the language of CARA because it limits the authorization to nurse practitioners, rather than including Clinical Nurse Specialists (CNSs). CNSs, especially those in psychiatric/mental health, have historically provided care and treatment to patients needing MAT. The exclusion of CNSs decreases the number of health care prescribers available to provide MAT. The Board wrote to the National Council of State Boards of Nursing requesting their assistance with the federal agencies in order to clarify the intent of the language or pursue more inclusive language.

Administrative Rules – MAT

T. Dilling updated the Committee on a provision in HB 49, the budget bill, which directs the Medical and Nursing Boards to draft rules regulating the prescribing of buprenorophine for MAT. The Medical Board has informed the Nursing Board staff that they have a rule addressing the prescribing of buprenorophine for MAT and are not currently planning to revise it. T. Dilling stated he would provide information about

MAT rules to the Board at the November meeting. He requested that interested parties and the Committee members review information and the draft rule once available in order to discussion and provide feedback at the January 29, 2018 meeting of the APRN Advisory Committee.

RN and APRN Licensing and Renewal Update

Director Houchen stated that the Committee members were provided a copy of the Board timeline for renewal, licensing, and implementation of HB 216 for review and reference. She reported that 88% of RN licenses have been renewed and over 3,000 RNs made their licenses inactive. Almost 11,000 APRNs renewed and transitioned to become licensed. The Board is emphasizing that APRNs must renew their RN license by October 31, 2017, even though they have until December 31, 2017 to complete the COA renewal/APRN license issuance process.

The Committee asked about continuing education (CE) requirements for the next renewal period. L. Emrich explained that because the 2017-2019 is the first full "license" period following initial licensure as APRNs, HB 216 CEs requirements are not required for the 2019 renewal period. APRNs must have complied with the CEs specified in HB 216 to renew in 2021. Therefore, the CE must be obtained between November 1, 2019 and October 31, 2021 for APRNs to renew in 2021. The Committee members noted that the CE requirements for national certification must be met by APRNs.

Acute and Primary Care Practice

T. Dilling discussed the background and history of the Consensus Model and APRN acute and primary care practice. In 2008, the Consensus Model was adopted after major collaborative work on the national level that included meetings with representatives of APRN education, APRN practice, national accreditation organizations, and regulators for the purpose of creating uniformity in the regulation of APRN practice across the states. The work was based on studies and research in the health care environment.

In 2011 there were national meetings and follow up which confirmed the understanding among stakeholders and regulators that APRN practice was based upon national certification in primary or acute care. Emails from that time period indicate that Board staff responses were consistent with Ohio law and rules, which followed the Consensus Model and this understanding.

However, after the publication of the 2016 *Momentum* article, the Board received communications from some APRNs voicing disagreement. They stated that the Board changed its interpretation of the NPA and that the Board was not following the Consensus Model. With such strong disagreement and opinions regarding the interpretation of statutory language, the Board requested a formal opinion from the Ohio Attorney General. Director Houchen read the summarized opinion of the Attorney General presented by Assistant Attorney General, James T. Wakley to the Board the July Board Meeting.

Acting Chair E. Keels stated that Committee members received a CNP Primary Care and Acute Care Practice Report and attachments, which was discussed by the Board at the July Board meeting. The Report summarizes the Consensus Model, identifies how some other states have implemented the Consensus Model similar to Ohio, and provides articles and resources about the issues. She stated the Board must address the issues about acute and primary care considering the ramifications on the delivery of care, and whether to continue to follow the Consensus Model. She stated that the Committee was not being asked at this meeting to make any decisions, but to discuss the issues.

Acting Chair E. Keels, L. Klenke, T. Dilling, and Lisa Emrich reported on a meeting convened with OHA and OONE leadership representatives on September 20, 2017. It was noted that some nurses considering advanced practice education are steered in the direction of family nurse practice because of the wider age population in practice. This then may not be congruent with providing acute care. It was noted that the Consensus Model may need to be reviewed, updated, and clarified regarding acute and primary care certifications and education models.

The Board asked OHA/OONE to gather data regarding the patient populations being served by primary care APRNs in acute care settings because this may assist in ascertaining the number of APRNs impacted and further delineates the issues. The Board anticipates that it may have this information for the November Board meeting. L. Klenke said perhaps the gray areas are not that gray because many view the entire hospital as "acute care," but the Board emphasized that within the hospital, there are patients for whom primary care APRNs could provide care.

L. Klenke recommended a review of workforce data to determine if care delivery changed over time, and if so, perhaps APRN education systems and national certifications may need to address the changes. K. Scordo stated she has a copy of the Adult-Gerontology Acute Care and Primary Care Nurse NP Competencies (AACN 2016) which she believes clearly differentiates competency areas for acute and primary care APRNs which she can provide to the Committee.

M. Zamudio asked about the Consensus Model referring to specialty areas and asked about the Board regulating the specialty of APRNs. Director Houchen stated the Board does not regulate APRN specialties, as the term is used in the Consensus Model. She believes the Consensus Model terminology may be causing confusion because the word "specialty" seems to have different meanings when interested parties discuss APRN practice, state law, and the Consensus Model. The basis of licensure, and the direction of the Consensus Model, is that individuals must complete their formal graduate nursing education and clinical experience in one of the four roles (CNP, CNS, CNM, CRNA) with at least one population focus. Deciding to specialize occurs after APRN national certification and licensure. The APRN specializes after becoming nationally certified and licensed, as described in the Consensus Model. Further, the specialties must align with the APRN's education and national certification in either acute or primary care.

HB 191 (CRNA bill)

Andrew Herf, Brian Garrett and Kelly Leahy presented information about HB 191 for Certified Registered Nurse Anesthetists (CRNAs). The bill will remove the supervision requirement and provide prescriptive authority for CRNAs.

C. Rinehart stated that she understood the CRNAs once had prescriptive authority, but it was taken away, and then the AG Opinion was issued. Director Houchen clarified that the NPA never authorized prescriptive authority for CRNAs. The Board discussed prescriptive authority for CRNAs many years ago, and never opposed it, but did inform CRNAs that a statutory change would be required to obtain prescriptive authority. CRNAs did not pursue that option, until now. A. Herf agreed. Director Houchen further clarified that the Board requested the AG Opinion after two years of ongoing discussions about the statutory provisions. The AG Opinion was in agreement with the language of the statute that the Ohio legislature had never granted CRNAs prescriptive authority.

President Sharpnack thanked the guests for attending and working collaboratively with the Board. Director Houchen thanked them for their continued communications with the Board regarding the bill.

Review and Approve June Meeting Minutes

S. Wright-Esber moved to approve the minutes as written and K. Scordo seconded. E. Keels and M. Zamudio abstained. The Committee approved the minutes.

Communications with the Board

Director Houchen discussed the available resources provided by the Board including the added email account following the implementation of HB 216 to answer related questions and adding additional staff resources. She encouraged Committee members and other to contact anyone at the Board with questions, concerns or issues.

Board Policy

Director Houchen provided a copy of the *Board Member Policy B-09: Advisory Groups, Board Ad Hoc Committees and Standing Committees*, as revised and approved by the Board at the July Board meeting. She stated that the Board reviews policies every year or as needed, and the Committee members could provide recommendations for changes if needed.

M. Zamudio stated that she noted the multiple emails that were included with the Committee materials that were questions and responses to various APRN questions, and asked whether the Committee would be asked to review these emails at each meeting. L. Emrich responded that specific emails were the attachments to the meeting materials and were included to provide full information to the Committee members. She also stated that email practice questions received by the Board are public record.

Select Committee Chair for Future Meetings

E. Keels asked for volunteers to be Chair of the Committee. K. Scordo nominated E. Keels. E. Keels asked for other nominations. C. Reinhart nominated S. Wright-Esber. The Committee elected Erin Keels to be Committee Chair for a one-year term.

Future Meetings

The scheduled meetings are January 29, 2018; June 11, 2018; and October 1, 2018. C. Rinehart asked if there could be a discussion at future meetings about the removal of the SCA or how could this be accomplished. T. Dilling suggested that if an association is developing legislative language on the topic, the association could discuss the language with the Board and the APRN Advisory Group is now a possible place to discuss and report to the Board. Historically the Board has not taken positions on bills due to the Board's regulatory role, but the Board can provide comments for the purpose of making the language clear and explaining the regulatory aspects to those impacted, such as licensees, stakeholders, and the Board. C. Rinehart stated she would bring back information to the Advisory Committee.

Public Comments

E. Keels asked if anyone wanted to make public comments. No one presented public comments.

Adjournment

The meeting adjourned at 3:04 p.m.