

# Nurse Practice Acts Guide and Govern: Update 2017

Kathleen A. Russell, JD, MN, RN

The state's duty to protect those who receive nursing care is the basis for a nursing license. That license is an authorization or permission from state government to practice nursing. The guidelines within the state nurse practice act and the state nursing regulations provide the framework for safe, competent nursing practice. All nurses have a duty to understand their nurse practice act and regulations, and to keep up with ongoing changes as this dynamic document evolves and the scope of practice expands.

*Keywords:* Board of nursing, education standards, licensure, nurse practice act, nursing regulation, public protection, scope of practice

## Learning Objectives

- Recall the history of nurse practice acts (NPAs).
- Describe the eight elements of an NPA.
- Discuss disciplinary action, including grounds and possible actions.
- Name the ways that licensure status and board of nursing (BON) actions are communicated to the public.
- Identify the purpose of state involvement in the regulation of nursing practice.

Permitting a new driver to get behind the wheel of a car requires the driver to know the laws governing driving; however, the laws do not tell the whole story. For example, what is a driver to do when entering an unprotected intersection? What governs the driver's movement into the intersection? How does the driver account for the weather, vehicle, and road conditions? What is the driver's knowledge and experience level? Any new driver needs guidance or rules to manage the inherent risks.

Inherent risks are also a part of nursing. Patients are ill; medications and treatments have benefits and adverse effects; clinical situations are undetermined, open ended, and highly variable (Benner, Malloch, & Sheets, 2010, p. 6). Providing nursing care sometimes feels like the new driver navigating that unprotected intersection. As with the new driver, education and standards provided by laws and regulations designed to protect the public provide guidance in nursing practice.

Nursing requires specialized knowledge, skill, and independent decision making:

The practice of nursing involves behavior, attitude and judgment, and physical and sensory capabilities in the application of knowledge, skills, and abilities for the benefit of the client. Nursing careers take widely divergent paths—practice focus varies by setting, by types of clients, by differ-

ent disease, therapeutic approach or level of rehabilitation. Nurses work at all points of service in the health care system (Sheets, 1996).

A layperson does not necessarily have access to health professional credentials and he or she does not ordinarily judge whether the care received is delivered according to standards of care. Because health care poses a risk of harm to the public if practiced by professionals who are unprepared or incompetent, licensed professionals are governed by laws and regulations designed to minimize the risk.

Additionally, nurses are mobile and sophisticated, and they work in a society that is changing and asymmetrical for consumers. The result is that the risk of harm is inherent in the intimate nature of nursing care. Thus, the state is required to protect its citizens from harm (Sheets, 1996). That protection comes in the form of reasonable laws to regulate occupations such as nursing. Consequently, these laws include standards for education, scope of practice, and discipline of professionals.

## History of Nurse Practice Acts

Before the Industrial Revolution, individuals could evaluate the quality of services they received. Many communities were small, and everyone knew everyone. Basic needs were met mostly by each family, and when people turned to others, they knew the reputations of those who provided services. At that time, anyone could call themselves a nurse. However, as technology and knowledge advanced, a variety of people and groups began to provide services (Sheets, 1996). Individuals were no longer good arbiters of the quality of a provider or a service:

The Progressive Era (1890–1920) in the United States was a wellspring of innovative ideas and industrialization. The era saw advancements in science, urbanization, education,

and law, which in turn led to remarkable social, economic, and political reform; however, it was the confluence of these factors that led to the modernization of the professions and the idea of professional regulation and licensing (Alexander, 2017).

Regulation implies government intervention to accomplish an end beneficial to its citizens. Because the United States Constitution does not include provisions to regulate nursing, the responsibility falls to the states. Under a state's police powers, it has the authority to make laws to maintain public order, health, safety, and welfare (Guido, 2010, p. 34). In addition to the state's need to protect the public, nursing leaders wanted to:

legitimize the profession in the eyes of the public, limit the number of people who hired out as nurses, raise the quality of professional nurses, and improve educational standards in schools of nursing (Penn Nursing Science, 2012).

The first nurse registration law was enacted in 1903 in North Carolina, and it was written to do just that—protect the title of nurse and improve the practice of nursing. Developing nursing examinations and issuing licenses was entrusted to the North Carolina Board of Nursing (North Carolina Nursing History, 2017). New Jersey, New York, and Virginia passed registration laws later that same year. These early acts did not define the practice of nursing; however, in 1938, New York defined a scope of practice for nursing (NCSBN, 2010). By the 1970s, all states required licensure for registered and practical nurses.

Advanced practice nurses can be traced to the Civil War, when nurses assisted with anesthesia services during surgery (Hamric, Spross, & Hanson, 2005, p. 4). Advanced practice registered nurse (APRN) roles and specialization have continued to this day, as has the evolution of formal scope of practice language within legislative statutes.

## Nurse's Guide to Action

How could a law function as a guide to action if almost no one knows it (Howard, 2011, p. 30)? The laws and regulations for the nursing profession can only function properly if nurses know the current laws and regulations governing practice in their state.

Laws governing individual health care providers are enacted through state legislative action. Regulatory authority is derived from legislative action. Whereas a state constitution forms the framework for state governments, legislatures enact laws that grant specific authority to regulatory agencies. For example, a state legislature enacts an NPA to regulate nursing and delegates authority to the state boards of nursing (BONs) to enforce the NPA. The mission or purpose of the BON is to protect the public. State legislatures delegate many enforcement activities to state administrative agencies. This delegation of regulatory authority allows the legislature to use the expertise of the administrative agencies in the implementation of statutes.

All states and U.S. territories have an NPA and a set of regulations or rules that must be considered together. The broad nature of the NPA is insufficient to provide the complete guidance for the nursing profession. Therefore, each state develops rules or regulations that seek to clarify or make the NPA more specific. Regulations and rules must be consistent with the NPA and cannot extend beyond it. These regulations and rules undergo a process of public review before enactment (NCSBN, 2011a; Ridenour & Santa Anna, 2012, p. 504). Once enacted, regulations and rules have the full force and effect of law.

Although the specificity of NPAs varies among states, all NPAs include:

- definitions
- authority, power, and composition of a BON
- educational program standards
- standards and scope of nursing practice
- types of titles and licenses
- protection of titles
- requirements for licensure
- grounds for disciplinary action, other violations, and possible remedies.

Specific NPA and regulations may be located on the BON website. Additionally, the NCSBN Nurse Practice Act Toolkit (NCSBN, 2017a) includes a *Find Your Nurse Practice Act* tool that provides links to each state's NPA and regulations. The NPA is found as chapters in the state law or state statute. Regulations are found in the state administrative code. Additionally, at least 18 BONs have created Nurse Practice Acts/Jurisprudence online, self-paced continuing education courses (NCSBN Learning Extension, 2017).

### Definitions

Terms or phrases used in statutes must be clear and unambiguous for the intent of a law to be useful to legislators and citizens. A law does not need to define terms that are commonly understood; however, definitions are often included to avoid ambiguity about word meanings. For example, *encumbered*, *reinstatement*, and *reactivation* are often defined in NPAs. An *encumbered* license is defined as a license with current discipline, conditions, or restrictions. *Reinstatement* is different from *reactivation* in that *reinstatement* refers to reissuance of a license following disciplinary action, whereas *reactivation* is a reissuance not related to disciplinary action (NCSBN, 2012a).

### Authority, Power, and Composition of a BON

The NPA grants authority to regulate the practice of nursing and the enforcement of law to an administrative agency or BON, which is charged with maintaining the balance between the rights of the nurse to practice nursing and the responsibility to protect the public health, safety, and welfare of its citizens (Brous, 2012, p. 508). The membership and qualifications of the BON, terms of office, meetings, and election of officers are specified in the NPA. The BON is usually composed of registered nurses (RNs), licensed

practical/vocational nurses (LPN/VNs), advanced practice nurses, and members representing the public.

How BON membership is constituted depends on state statute. Some states give the governor authority to appoint members to the BON after reviewing suggestions from professional nursing organizations. Other states require nominations from professional organizations with appointment by the director or head of the regulatory agency. Only in North Carolina are BON members elected by the general public. In still other states, the legislature appoints public members (Brent, 2012, p. 2). The BON typically hires an executive officer, who has the authority to staff the office with nurses, attorneys, investigators, and administrative staff.

Typically, the powers and duties of BONs include:

- making, adopting, amending, repealing, and enforcing rules
- setting nursing education standards
- setting fees for licensure
- performing criminal background checks
- licensing qualified applicants
- maintaining database of licensees
- ensuring continuing competence
- developing nursing standards of practice
- collecting and analyzing data
- implementing discipline process
- regulating registered nurses
- regulating unlicensed assistive personnel
- hiring BON employees.

### Educational Program Standards

Most U.S. BONs set standards for prelicensure nursing educational programs and clinical learning experiences and approve such programs that meet requirements of the NPA. These standards are reflected in the rules that accompany the NPA. The prelicensure program standards include accreditation, curriculum specifics, administrator and faculty qualifications, continuing approval, and approval of new, or withdrawal of approved, nursing education programs.

Specific curriculum rules often include necessary standards of evidence-based clinical judgment; skill in clinical management; biological, physical, social, and behavioral science requirements; professional responsibilities; legal and ethical issues; patient safety; and best practices of nursing.

### Standards and Scope of Nursing Practice

Nursing care is both directed and evaluated by the NPA and regulations/rules. The standards and scope of nursing practice within an NPA are aligned with the nursing process. For example, comprehensive nursing assessment based on biological, psychological, and social aspects of the patient's condition; collaboration with the health care team; and patient-centered health care plans, including goals and nursing interventions, can all be language within the NPA. Further standards include decision making and critical thinking in the execution of independent nursing strategies, provi-

sion of care as ordered or prescribed by authorized health care providers, evaluation of interventions, development of teaching plans, delegation of nursing intervention, and advocacy for the patient.

Rules are often more specific and inclusive than the act. The NPA may require *safe practice*, whereas the rules may specify a plan for *safe practice*, requiring orientation and training for competence when encountering new equipment and technology or unfamiliar care situations; communication and consultation with other health team members regarding patient concerns and special needs, status, or changes; response or lack of response to interventions; and significant changes in patient condition (NCSBN, 2012a, 2012b).

The NPA typically identifies *delegating and assigning nursing interventions to implement the plan of care* as within an RN's scope of practice (NCSBN, 2012a). The rules, however, spell out the RN's responsibility to organize, manage, and supervise the practice of nursing. Indeed, the rules can delineate the specific steps for *effective delegation* by an RN as ensuring:

- unlicensed assistive personnel have the education, legal authority, and demonstrated competency to perform the delegated task
- tasks are consistent with unlicensed assistive personnel's job description
- tasks can be safely performed according to clear, exact, and unchanging directions
- results of the task are reasonably predictable
- tasks do not require assessment, interpretation, or independent decision making
- patient and circumstance are such that delegation of the task poses minimal risk to the patient
- consequences of performing the task improperly are not life threatening
- RNs provide clear directions and guidelines regarding the task (NCSBN, 2012b).

### Title and Licensure

NPA language generally includes a statement regarding the title of RN and LPN/VN. By specifying that the title of RN is "given to an individual intended to practice nursing" and LPN/VN is "given to an individual licensed to practice practical/vocational nursing," the NPA protects these titles from being used by unauthorized persons and thereby protects the public (NCSBN, 2012a).

Each state's NPA also includes statements regarding examination for licensure as RNs and LPN/VNs, including frequency and requisite education before examination and reexamination. Additional requirements of *licensure by examination* typically include:

- application and fee
- graduation from an approved prelicensure program or a program that meets criteria comparable to those established by the state
- passage of the professional examination
- attestation of no report of substance abuse in the last 5 years

- verification of no report of actions taken or initiated against a professional license, registration, or certification
- attestation of no report of acts or omissions that are grounds for disciplinary action as specified in the NPA.

The majority of jurisdictions include criminal background checks as an additional requirement for licensure (NCSBN, 2012c).

Further requirements are also included in NPAs for licensure by examination of internationally educated applicants, licensure by endorsement, as well as licensure renewals, reactivation, and continuing education. Endorsement is an approval process for a nurse who is licensed in another state. Obtaining licensure by endorsement often includes precensure requirements and verification of licensure status from the state where the nurse obtained licensure by examination (NCSBN, 2012a).

Although statutory language varies from state to state regarding the licensure of APRNs, most states recognize clinical nurse specialist, nurse midwife, nurse practitioner, and registered nurse anesthetist as APRN roles and require certification by a national nurse certification organization. Education and specific scope of practice for APRNs varies from state to state.

### Grounds for Disciplinary Action, Violations, Statute of Limitations, Possible Remedies, and Reciprocal Discipline

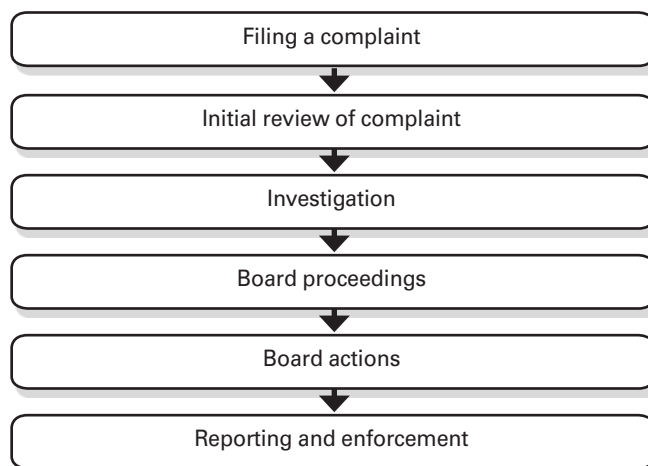
The majority of nurses are competent and caring individuals who provide a satisfactory level of care; however, when a nurse deviates from the standard of care or commits an error, a complaint may be filed with the BON. The BON, through its statutory authority specified in the NPA, is responsible for reviewing and acting on complaints. A BON can take formal action only if it finds sufficient basis that the nurse violated the NPA or regulations. Each case varies and needs to be considered on its own merits (Brous, 2012, pp. 510–511; NCSBN, 2012d). Since BONs take disciplinary action in order to protect the public by ensuring that only properly qualified and ethical individuals practice nursing, this public safety objective is not time-limited. Therefore, in the absence of a specific statute to the contrary, statutes of limitations are inapplicable to BON license revocation and other disciplinary proceedings (NCSBN, 2017b).

For an overview of the disciplinary process from receipt of complaint to resolution, see Figure 1. Complaints about nursing care are often grouped into the following categories:

- *Practice-related*: breakdowns or errors during aspects of the nursing process (Wade, 2015)
- *Drug-related*: mishandling, misappropriation, or misuse of controlled substances
- *Boundary violations*: nontherapeutic relationships formed between a nurse and a client in which the nurse derives a benefit at the client's expense (NCSBN, 2009)
- *Sexual misconduct*: inappropriate physical or sexual contact with a client

FIGURE 1

### Board of Nursing Complaint Process



- *Abuse*: maltreatment of clients that is physically, mentally, or emotionally harmful (Russell & Wade, 2015)
- *Fraud*: misrepresentation of the truth for gain or profit (usually related to credentials, time, or payment)
- *Positive criminal background checks*: detection of reportable criminal conduct as defined by statute (NCSBN, 2011b, 2012e; Russell & Beaver, 2013; Russell, 2016).

If a substance use disorder is suspected from the evidence, some BONs may offer the nurse a nondisciplinary alternative-to-discipline program. These programs are monitoring programs, not treatment programs. The possibility of avoiding the public notoriety of discipline can be a driving factor in breaking through the nurse's denial of substance use disorder and movement to a program that will assist in retaining her or his license. These programs refer nurses for evaluation and treatment, monitor the nurse's compliance with treatment and recovery recommendations, monitor abstinence from drug or alcohol use, and monitor their practice upon return to work. Alternative-to-discipline programs aim to return nurses to practice while protecting the public. Various models of alternative-to-discipline programs exist, and their use varies among BONs (NCSBN, 2017c). Some programs provide services via the BON, a contracting agency, a BON special committee, a peer-assistance program of a professional association, or a peer-assistance employee program (NCSBN, 2012f).

Some states have incorporated an alternative-to-discipline program for practice-related complaints (NCSBN, 2016). These programs seek to provide patient safety through timely education and oversight (Holm & Emrich, 2015). This type of program shifts the focus to improving practice and professional responsibility. To participate in a practice-related alternative-to-discipline program, the practice by the nurse must not pose a threat to patient safety. These programs vary by state.

For all other grounds, the final decision reached by the BON is based on the findings of an investigation and the results of the board proceedings. The language used to describe the types of actions available to BONs varies according to each state's statute.

Although terminology may differ, board action affects the nurse's licensure status and ability to practice nursing in the state taking action. BON actions may include the following:

- fine or civil penalty
- referral to an alternative-to-discipline program for practice monitoring and recovery support for those with drug- or alcohol-dependence or some other mental or physical condition
- public reprimand or censure for minor violation of the NPA, often with no restrictions on license
- imposition of requirements for monitoring, remediation, education, or other provision tailored to the particular situation
- limitation or restriction of one or more aspects of practice, such as probation with limits on role, setting, activities, or hours worked
- separation from practice for a period (suspension) or loss of license (revocation or voluntary surrender)
- other state-specific remedies (NCSBN, 2012g).

An attempt to evade disciplinary action merely by fleeing the state does not protect the public. Therefore, a state board of nursing is well within its legitimate authority to take action against a licensee on the basis of another state's disciplinary action that implicates the individual's ongoing ability and likelihood to practice professionally and safely. This reciprocal or retained jurisdiction action serves to assist the BON to fulfill the legislature's charge to protect the public (NCSBN, 2017b).

### Public Access to Licensure Status and Board Actions

Licensure status and BON actions are public information, and BONs use a variety of methods to communicate this information, including newsletters, database and websites. Licensure information and board action for most states are also available to the public via Nursys QuickConfirm License Verification® (Nursys QuickConfirm®, 2017). Any individual or entity may use this service free of charge.

Federal law requires that state adverse actions taken against a health care professional's license be reported to the federal data bank. The National Practitioner Data Bank (NPDB) was established in 1986 by Congress as a workforce tool to "prevent practitioners from moving from state-to-state without disclosure or discovery of previous damaging performance" (U.S. Department of Health & Human Services, 2017a). As such, the NPDB is a repository of reports containing information on certain adverse actions related to health care practitioners, providers, and suppliers. The data bank also includes information on medical malpractice payments. Information housed within NPDB is not available to the general public. Only authorized eligible entities may query the NPDB. The NPDB Guidebook (U.S. Department of Health and Human Services & Health Resources and Services Administration,

2015) contains specific information regarding authorized queriers, which generally includes hospitals, other health care entities, professional societies, licensing boards, attorneys, and the licensee. There is a nominal charge for an authorized individual or entity to query the NPDB (U.S. Department of Health & Human Services, 2017b).

## Being Informed About Your NPA

Ignorance of the law is never an excuse! The NPA and state regulations are not resources one can study in a prelicensure nursing education program and then put aside. The act and the regulations are dynamic documents that evolve and are updated or amended as changes in law or rules are made:

Inherent in our current healthcare system are changes which relate to demographic changes (such as the aging of the "baby boomers"); advances in technology; decreasing healthcare dollars; advances in evidence-based healthcare procedures, practices and techniques; and many other societal and environmental factors (NCSBN, 2012h).

State BONs are resources for the NPA and regulations. Links to NPAs are available on most state BON websites. Some BONs attempt to provide new information to nurses via their website or newsletter (Tedford, 2011). For example, the Virginia BON posts a list of frequently asked questions to help nurses navigate the various aspects of licensure and posts announcements regarding practice or licensing changes on their homepage (Virginia Board of Nursing, 2017). Use the *Find Your Nurse Practice Act* tool (NCSBN, 2017a) or take your jurisdiction's Nurse Practice Act/Jurisprudence online, self-paced continuing education course (NCSBN Learning Extension, 2017).

The state's duty to protect those who receive nursing care is the basis for a nursing license. That license is an authorization or permission from state government to practice nursing. The guidelines within the state NPA and the state nursing regulations provide the framework for safe, competent nursing practice. All nurses have a duty to understand their NPA and regulations and to keep up with ongoing changes as this dynamic document evolves and the scope of practice expands. The guidelines of the NPA and the regulations provide safe parameters within which to work and protect patients from unprofessional and unsafe nursing practice (Brent, 2012, p. 5; Mathes & Reifsnnyder, 2014). More than 100 years ago, state governments established BONs to protect the public's health and welfare by overseeing and ensuring the safe practice of nursing. Today, BONs continue their duty, but the law cannot function as a guide to action if almost no one knows about it. "To maintain one's license in good standing and continue practicing, nurses must understand that rights are always accompanied by responsibilities" (Brous, 2012, p. 506). It is your responsibility to know your state's NPA and rules before you enter that unprotected intersection of nursing care.

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**Kathleen A. Russell, JD, MN, RN**, is a Senior Policy Advisor, Nursing Regulation, National Council of State Boards of Nursing, Chicago, Illinois.

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