

Nurse Practice Acts Guide and Govern Nursing Practice

Kathleen A. Russell, JD, MN, RN

The practice of nursing is a right granted by a state to protect those who need nursing care, and safe, competent nursing practice is grounded in the guidelines of the state nurse practice act (NPA) and its rules. All nurses have a duty to understand their NPA and to keep up with ongoing changes as this dynamic document evolves and the scope of practice expands. This article reviews the reasons for and the importance of state NPAs and associated rules.

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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.

Before we permit a new driver to get behind the wheel of a car, we must familiarize her with the laws governing driving. But the laws don't 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 take into account the conditions of weather, vehicle, and road? What is the driver's level of knowledge and experience? The new driver needs guidance or rules to manage the inherent risks.

In the same way, risks are certain in nursing. Patients are ill; medications and treatments have benefits and side effects; clinical situations are underdetermined, open-ended, and highly variable (Benner, Malloch, & Sheets, 2010, p. 6). Providing nursing care sometimes feels like that unprotected intersection being navigated by the new driver. As with the new driver, education and standards provided by laws 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 different disease, therapeutic approach or level of rehabilitation. Nurses work at all points of service in the health care system" (National Council of State Boards of Nursing [NCSBN], 1996, p. 13). A layperson does not necessarily have access to the cre-

dentials of a health professional nor can a layperson ordinarily judge whether the care received is delivered according to the standard of care. Because health care poses a risk of harm to the public if practiced by professionals who are unprepared or incompetent, professionals are governed by laws and rules designed to minimize the risk.

Moreover, nurses are mobile and sophisticated and 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 (NCSBN, 1996, p. 13). That protection is in the form of reasonable laws to regulate occupations such as nursing. Consequently, these laws include standards for education and scope of practice as well as discipline of professionals.

History of Nurse Practice Acts

Prior to 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 herself a nurse. However, as technology and knowledge advanced, a variety of people and groups began to provide services (NCSBN, 1996, p. 5). Individuals were no longer good arbiters of the quality of a provider or a service.

Because the United States Constitution does not include provisions to regulate the practice of 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, enacted in 1903 in North Carolina, was written to do just that—protect the title of nurse and improve the practice of nursing. Developing nursing exams and issuing licenses was entrusted to the North Carolina Board of Nursing (UNC TV, 2012). New Jersey, New York, and Virginia passed registration laws that same year. These early acts did not define the practice of nursing, but in 1938, the state of New York did define 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 during surgery with anesthesia services (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 of the nursing profession can only function properly if nurses know the current laws governing practice in their state.

All states and territories have enacted a nurse practice act (NPA). Each state's NPA is passed by the state's legislature. But the NPA itself is insufficient to provide the necessary guidance for the nursing profession. Therefore, each NPA establishes a board of nursing (BON) that has the authority to develop administrative rules or regulations to clarify or make the law more specific. Rules and regulations must be consistent with the NPA and cannot go beyond it. These rules and regulations undergo a process of public review before enactment (NCSBN, 2011a; Ridenour & Santa Anna, 2012, p. 504). Once enacted, rules and regulations 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.

Definitions

For the intent of a law to be useful to legislators and citizens, terms or phrases used in statutes must be clear and unambiguous. Of course, a law does not need to define terms that are commonly understood. However, definitions are often included in laws to avoid uncertainty about the meaning of words. 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 the former refers to reissuance of a license following disciplinary action, whereas the latter is a reissuance not related to disciplinary action (NCSBN, 2012a).

Authority, Power, and Composition of a BON

The NPA gives authority to regulate the practice of nursing and the enforcement of law to an administrative agency or BON that 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, usually composed of registered nurses (RNs), licensed practical/vocational nurses (LPN/VNs), advanced practice nurses, and members representing the public, are specified by the NPA. Specifics regarding terms of office, meetings, and election of officers are also included.

How the membership of the BON 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. In North Carolina, members of the BON are 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:

- hiring BON employees
- 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 unlicensed assistive personnel.

Educational Program Standards

The BON must 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 standards for prelicensure programs include accreditation, curriculum specifics, administrator and faculty qualifications, continuing ap-

proval, 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; biologic, 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

One's nursing care is both directed and measured by the NPA and rules. The standards and scope of nursing practice within an NPA are aligned with the nursing process. For example, comprehensive nursing assessment based on biologic, psychological, and social aspects of the patient's condition; collaboration with the health care team; 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, provision 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 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 (UAP) have the education, legal authority, and demonstrated competency to perform the delegated task
- task is consistent with UAP's job description
- task can be safely performed according to clear, exact, and unchanging directions
- results of the task are reasonably predictable
- task does 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

- RN provides clear directions and guidelines regarding the task (NCSBN, 2012b).

Title and Licensure

The use of the title *nurse* by unlicensed individuals misleads and endangers the public. "This poses a serious threat to patient care and safety. Reserving the title *nurse* for only those meeting the legal and educational standards allows the public to consult with professionals required to adhere to professional codes of practice and ethics" (Pennsylvania State Nurses Association, 2011).

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 therefore 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 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 prelicensure 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 vary from state to state.

Grounds for Disciplinary Action, Other Violations, and Possible Remedies

The majority of nurses are competent and caring individuals who provide a satisfactory level of care. However, when a problem is experienced with a nurse and the nurse's performance is not acceptable, a complaint may be filed with the BON. The BON, through its statutory authority specified in the NPA, is responsible for review and action regarding complaints. A BON can take formal action only if it finds sufficient basis that the nurse violated state laws or regulations. Each case varies and needs to be considered on its own merits (Brous, 2012, pp. 510–511; NCSBN, 2012d). For an overview of the disciplinary process from receipt of complaint to resolution, see Figure 1.

Disciplinary cases are often grouped into the following categories:

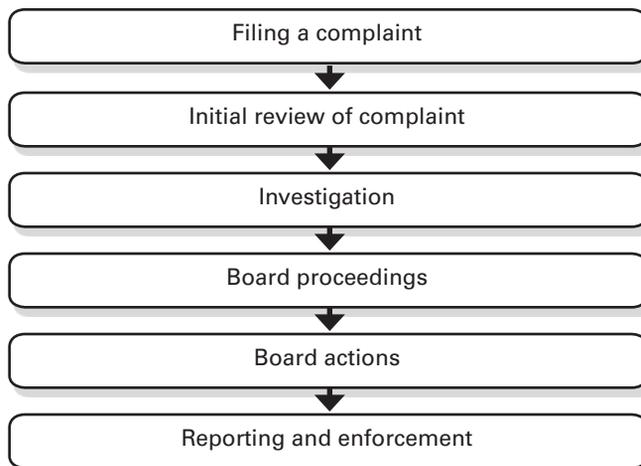
- *Practice-related*: breakdowns or errors during aspects of the nursing process
- *Drug-related*: mishandling, misappropriation, or misuse of controlled substances
- *Boundary violations*: nontherapeutic relationships formed between a nurse and a client in which the nurse derives a benefit at the client's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

If a substance use disorder is suspected from the evidence and there is no diversion of medication, BONs may offer the nurse a nondisciplinary alternative-to-discipline program. These programs are not treatment programs—they are monitoring programs. The possibility of avoiding the public notoriety of discipline can be an important factor in breaking through the nurse's denial of substance use disorder and movement to a program that will assist the nurse in retaining her or his license. These programs are designed to 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 programs work to return nurses to practice while protecting the public. Various models of alternative programs exist, and their use varies among BONs. Some programs provide services via the BON, a contracting agency, a special committee of the BON, or a peer-assistance program of a professional association or a peer-assistance employee program (NCSBN, 2012f).

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

FIGURE 1

Board of Nursing Complaint Process



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 of time (suspension) or loss of license (revocation or voluntary surrender)
- Other state-specific remedies (NCSBN, 2012g).

BON actions are considered public information, and many BONs have determined that it is in the public interest to publicize their actions against nurses' licenses and actions that reinstate licenses. BONs use a variety of methods to communicate this information, including newsletters and websites. Also, federal law requires that adverse actions taken against a health care professional's license be reported to federal databanks. The National Practitioner Data Bank and Healthcare Integrity and Protection Data Bank are two federal databanks created to serve as repositories of information about health care providers in the United States (NCSBN, 2012h).

Being Informed About Your NPA

Ignorance of the law is never an excuse! The NPA is not something one can study in a prelicensure nursing education program and then put aside. The act is a dynamic document that evolves

and is updated or amended as changes in scope of practice occur. “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, 2012i).

Your state BON is a resource for the NPA. 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 (Satterlund, 2012).

The practice of nursing is a right granted by a state to protect those who need nursing care. The guidelines of the NPA and its rules provide safe parameters within which to work and protect patients from unprofessional and unsafe nursing practice (Brent, 2012, p. 5). 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). Make sure you know your state’s NPA and rules before you enter into that unprotected intersection of nursing care.

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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.
- The authors and planners of this CE activity have disclosed no financial relationships with any commercial companies pertaining to this activity.



CE Posttest

Nurse Practice Acts Guide and Govern Nursing Practice

If you reside in the United States and wish to obtain 1.4 contact hours of continuing education (CE) credit, please review these instructions.

Instructions

Go online to take the posttest and earn CE credit:

Members – www.ncsbninteractive.org (no charge)

Nonmembers – www.learningext.com (\$15 processing fee)

If you cannot take the posttest online, complete the print form and mail it to the address (nonmembers **must** include a check for \$15, payable to NCSBN) included at bottom of form.

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Contact hours: 1.4
Posttest passing score is 75%.
Expiration: October 2015

Posttest

Please circle the correct answer.

- 1. Which state was the first to enact a nurse practice act (NPA)?**
 - a. North Carolina
 - b. New York
 - c. New Jersey
 - d. Virginia
- 2. What is the purpose of an NPA?**
 - a. To protect nurses from lawsuits
 - b. To protect the public
 - c. To guide federal health care policy
 - d. To guide workplace policy
- 3. Which statement about the regulation of nursing practice is correct?**
 - a. Every state and territory has adopted the same set of rules and regulations for nursing practice.
 - b. Each state has the authority to enact a law governing nursing practice.
 - c. The U.S. Constitution includes provisions for regulating the practice of nursing.
 - d. Professional standards of practice are enacted through regulatory organizations.
- 4. What is the best resource for information about an NPA?**
 - a. Healthcare Integrity and Protection Data Bank
 - b. U.S. Department of Health and Human Services
 - c. State board of nursing (BON)
 - d. American Nurses Association
- 5. BON members are:**
 - a. elected officials who serve for 2 years.
 - b. appointed by the governor.
 - c. nurses and sometimes members of the public.
 - d. hired by the BON's executive officer.
- 6. Some newly licensed RNs are discussing their NPA during orientation. Which statement is *incorrect* and needs to be corrected by their preceptor?**
 - a. The NPA requires certification and a master's degree for all APRNs.
 - b. The standards and scope of practice for nurses are aligned with the nursing process.
 - c. The use of the title *registered nurse* is protected by the NPA.
 - d. The NPA sets standards for prelicensure nursing education.
- 7. What is the relationship between an NPA and rules or regulations?**
 - a. A BON can enact a rule without input from the public.
 - b. A BON can change a regulation anytime.
 - c. Rules can supersede the requirements of an NPA.
 - d. Rules are often more specific than the NPA.
- 8. Which of the following is an example of unacceptable delegation?**
 - a. The RN asks the unlicensed assistive person to help a client walk to the bathroom.
 - b. The RN asks the unlicensed assistive person to measure and then record a client's vital signs.
 - c. The RN assigns the LPN to care for a client who is ready for discharge.
 - d. The RN delegates medication administration to the LPN.
- 9. Which of the following is a requirement for initial licensure as a nurse in every state?**
 - a. Confirmation of being drug free for at least 1 year
 - b. Passing a licensure examination
 - c. Criminal background check verifying no arrest record
 - d. Endorsement by the state of permanent residence
- 10. A complaint is filed against a nurse. What can the nurse expect to happen next?**
 - a. The complaint will be investigated.
 - b. The nurse's license will be temporarily suspended.
 - c. The nurse will have a mandatory reduction in work hours.
 - d. The nurse will be monitored on the job.

11. After agreeing to participate in an alternative-to-discipline program, a nurse can expect:

- a. an announcement of her or his participation in the program in a newsletter.
- b. an official letter of censure in her or his workplace records.
- c. to return to work with no restrictions.
- d. regular monitoring to ensure compliance with treatment.

12. Which type of discipline case involves accepting gifts and money from a client while caring for him or her?

- a. Abuse
- b. Fraud
- c. Boundary violation
- d. Practice-related

13. The nurse is renting a house from a former client and, after several months, refuses to pay rent. The former client files a complaint. This is an example of which type of discipline case?

- a. Fraud
- b. Abuse
- c. Boundary violation
- d. Practice-related

14. A nurse leaves the long-term care facility building for several hours without telling anyone and without authorization. It is later discovered that the nurse documented providing care and giving medications to residents while she was out of the building. This is an example of which type of discipline case?

- a. Fraud
- b. Abuse
- c. Sexual misconduct
- d. Practice-related

15. The National Practitioner Data Bank is:

- a. a repository of information about health care providers in the United States.
- b. used to keep track of nurses assigned to alternative-to-discipline programs.
- c. a method of tracking licensure renewal.
- d. available to the general public for finding information about health care providers.

Evaluation Form (required)

1. Rate your achievement of each objective from 5 (high/excellent) to 1 (low/poor).

- Recall the history of nurse practice acts (NPAs).

1 2 3 4 5

- Describe the eight elements of an NPA.

1 2 3 4 5

- Discuss disciplinary action, including grounds and possible actions.

1 2 3 4 5

2. Rate each of the following items from 5 (very effective) to 1 (ineffective):

- Was the author knowledgeable about the subject?

1 2 3 4 5

- Were the methods of presentation (text, tables, figures, etc.) effective?

1 2 3 4 5

- Was the content relevant to the objectives?

1 2 3 4 5

- Was the article useful to you in your work?

1 2 3 4 5

- Was there enough time allotted for this activity?

1 2 3 4 5

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