21st Century Medicine Working Under Last Century Nursing Scope of Practice



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The March of Time by the Practice of Medicine



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What is meant by Scope of Practice?

- Main Goal: Provide patient safety
- Based on particular state's licensing laws and rules
- Sets legal framework for health care practice by profession
  - Prohibits use of credentials or titles by those not licensed within the profession
  - Restricts practice to those who pass defined education and training
  - Outlines the limits of a practice for a profession
- Wide variation between states and even within states

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Why the confusion?

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11 LEGALLY BINDING STATE / FEDERAL AUTHORITIES

1. California Business & Professions Code 2700 et al. – The Nursing Practice Act
2. California Business & Professions Code 2000 et al. – The Medical Practice Act
3. California Health and Safety Code 11150
4. Title 16 California Code of Regulations
5. Title 22 California Code of Regulations
6. Title 42 Code of Federal Regulation § 400 et al.
7. Board of Registered Nursing - State of California
8. Division of Licensing of the Medical Board of California
9. Joint Commission Standards
10. The Social Security Act § 1861
11. Centers for Medicare and Medicaid Services Pub. 100-01, Ch. 5



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Slow to Change

- Poorly Defined Scope of Practice
- Inconsistencies
- Cost Concerns
- Quality Concerns
- Professional boundary protectiveness
- Misinformation / Bias

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What do they all mean?

- STANDARDIZED PROCEDURES?
- STANDING ORDERS?
- PHYSICIAN DRIVEN PROTOCOLS?
- NURSING DRIVEN PROTOCOLS?
- FURNISH / ORDER / DISPENSE DRUGS?
- COMPOUNDING DRUGS?

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Standardized Procedures – Protocols formulated by organized health care systems for the performance of standardized procedure functions subject to any guidelines for standardized procedures promulgated by the Division of Licensing of the Medical Board of California (Med Board) and the Board of Registered Nursing (BRN). (*Title 16 CCR § 1471* and *California Business and Professions Code § 2725*)

Standing Orders – A pre-written medication order and specific instructions from the licensed independent practitioner to administer a medication to a specified person in clearly defined circumstances. (*Joint Commission standards MM.04.04.01*)

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Physician Driven Protocols – Specific orders given by the physician for medications, test, or other treatments for a specific patient. Any nurse can carry these out based on the order for that patient e.g. Insulin protocol.

Nursing Driven Protocols – Specific nursing functions that do not require an MD order which fall under the professional purview and role of an RN.



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Quiz Time:
What is it and Is it Permissible?

Example 1: Clinical practice guidelines for nursing assessments, care plans and teaching points for a specific disease process.

Permissible !

Example 2: Vital signs per protocol. In the Intensive Care Unit it might be hourly, in a Medical / Surgical Unit it might be every shift – unless superseded by a specific MD order for a specific patient.

Permissible !

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Clarification of Furnishing medications vs. Dispensing medications



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Furnishing or Ordering of Drugs or Devices

- Furnishing or ordering of drugs or devices by nurse practitioners is defined to mean the act of making a pharmaceutical agent or agents available to the patient in strict accordance with a standardized procedure.
  - The practical distinction is that **NP and CNM** can furnish or order and have a furnishing number issued by the Board under the authority of the California Business and Professions Code.
  - **RNs** do not have furnishing authority.

The Business and Professions Code does allow registered nurses to **dispense** (hand to a patient) medication, except controlled substances, upon the valid order of a physician in primary, community and free clinics.

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Compounding Medications:



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Compounding Medications

Under Title 16 of the California Code of Regulations §1735(a) “compounding” means

(1) Altering the dosage form or delivery system of a drug

(2) Altering the strength of a drug

(3) Combining components or active ingredients

(4) Preparing a drug product from chemicals or bulk drug substances

Registered Nurses are not allowed to compound.

Compounding does not include reconstitution of a drug pursuant to a manufacturer’s direction(s) for oral, rectal, topical, or injectable administration, nor does it include tablet splitting or the addition of flavoring agent(s) to enhance palatability.

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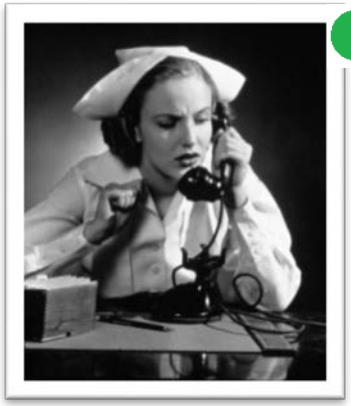
STANDARDIZED PROCEDURES

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ADVICE PROTOCOL BOOKS?

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Telephonic Diagnosis



- The risk of the nurse (RN) attempting to discern the presenting patient's complaint over the telephone and the risk of ordering medications inappropriate to the complaint, even though the nurse is operating under a Standardized Procedure, does not absolve the nurse or employer from liability.
- Telephone triage is a high-risk activity for any nurse (RN) acting solely on information provided verbally by the unknown and unseen patient.
- The RN is making a nursing assessment based on the information given them. An RN **cannot** diagnose.
- An RN **can** make a care-plan based on a given diagnosis.

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Advice Protocol Books

These books are appropriate to use in telephone advice and to make appropriate recommendations for care. However, there must be a Standardized Procedure in place that identifies these resources. A provider order is required for any medications or treatments. There should always be an order to back up the care.



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Quiz Time:



How often must a Supervising Physician countersign Nurse Practitioner charts?

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ANSWER:

The Nursing Practice Act does not require physician countersignature of NP charts.

Medi-Cal does not require a physician co-signature for the records of Medi-Cal patients.

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Legal Landscape



- Iowa Medical Society v. Iowa Department of Public Health (2013)
  - May Advanced Registered Nurse Practitioners supervise fluoroscopy procedures by radiology technologists?
  - Trial court such nurse supervision was inappropriate. Oral Argument heard at Iowa Supreme Court November 2012.

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Nosal-Tabor v. Sharp Chula Vista Medical Center (Aug. 3, 2015)

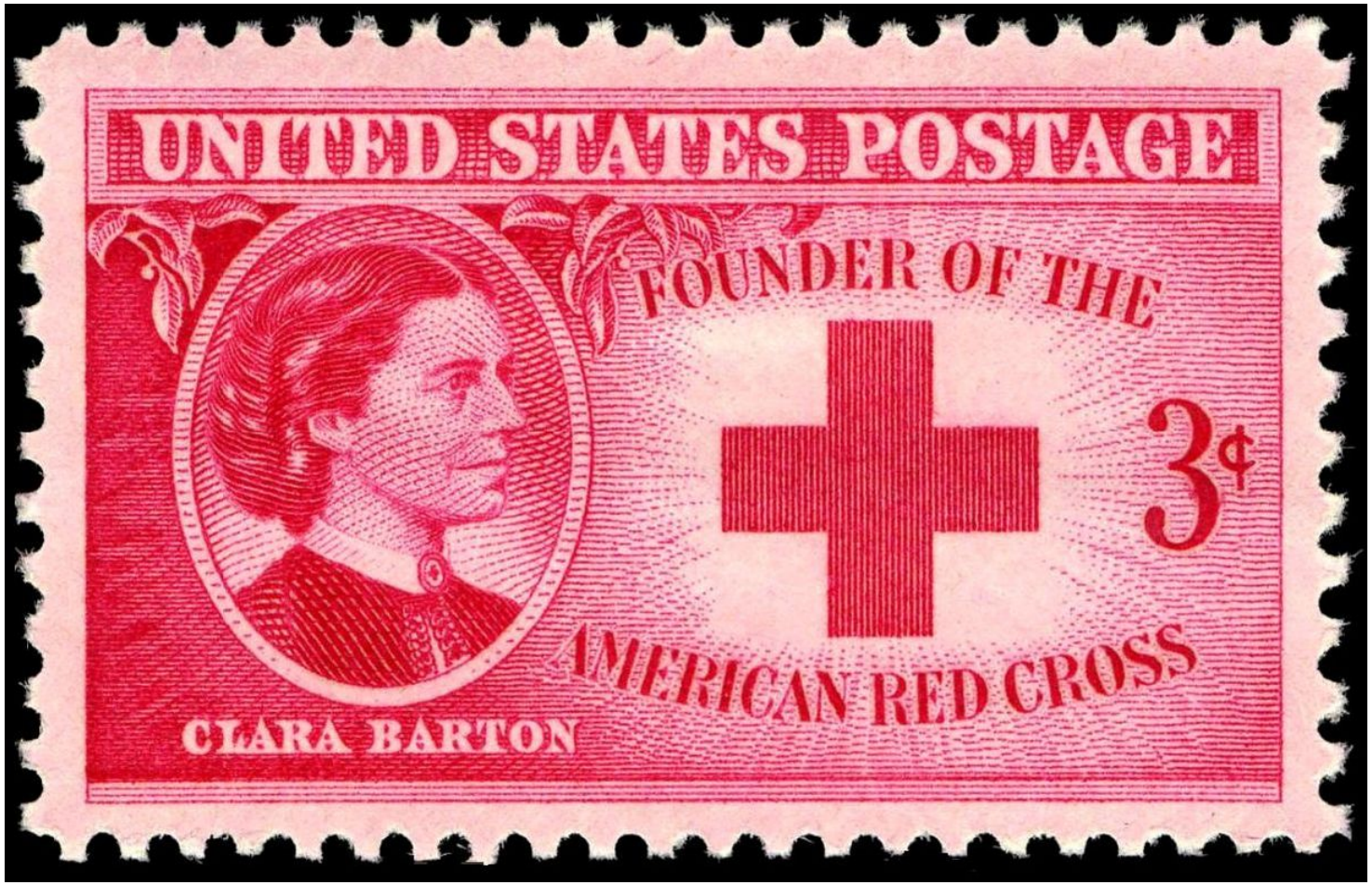
Karen Nosal-Tabor, a RN who had worked in the cardiology department at Sharp Chula Vista Medical Center (Sharp), brought wrongful termination and retaliation claims against Sharp after it terminated her for refusing to perform "nurse-led" cardiac stress testing. Prior to her termination, Nosal-Tabor had complained to Sharp's management that its policy of allowing nurses to perform unsupervised cardiac stress tests constituted an illegal practice of medicine because Sharp had not created legally adequate standardized procedures to allow nurses to perform such testing. The trial court granted Sharp's motion for summary judgment, ruling that Sharp had adequate "Standardized Procedures" for nurse-led cardiac stress testing in place before terminating Nosal-Tabor for refusing to perform that testing.

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Nosal-Tabor v. Sharp Chula Vista Medical Center (Aug. 3, 2015) (Cont.)

The Court of Appeal reversed. The court held that Sharp's written procedures for nurse-led cardiac stress testing failed to comply with the required Guidelines as a matter of law because they failed to include numerous components (including a method for the continuing evaluation of the competence of the nurses performing the procedure, a method of maintaining a written record of who is authorized to perform the procedure and a method of periodic review). The court further held that Nosal-Tabor had adequately identified a fundamental public policy on which to base her wrongful termination claim — the refusal to perform acts that were unlawful under the Business and Professions Code and the Guidelines.

QUESTIONS?



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