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Legal Brief

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Advanced Practice Nurses: Scope of Practice and Collaboration Requirements

This Legal Brief was drafted for general informational purposes only. It is not meant to be a comprehensive guide, nor should it be construed as legal advice. The information in this brief is current as of June 5, 2017; readers should consult the most recent versions of referenced statutes, regulations, and cases to ensure there have been no material changes.

Summary

In 2017, the South Dakota legislature granted Certified Nurse Practitioners and Certified Nurse Midwives the authority to provide certain direct patient care services independently, provided those professionals have completed 1,040 hours of patient care under the collaboration of a physician, certified nurse practitioner, or certified nurse midwife.

The professional's direct patient care practice must be within the professional's personal abilities and skills. SDSMA advises that the collaboration should also be consistent with the nature of the physician's practice and area of expertise. The collaborating physician may expose him- or herself to potential liability for the acts or omissions of the collaborating professional; therefore, care should be taken to provide appropriate collaboration and to provide for appropriate insurance coverage.

Discussion

A Certified Nurse Practitioner ("CNP") and a Certified Nurse Midwife (CNM) are health professionals who may, with appropriate licensure, collaboration and compliance with other legal and ethical requirements, provide certain types of direct patient care. See SDCL 36-9A-12 and 13.1. In order to practice in South Dakota as a CNP or a CNM, the person must be licensed by the South Dakota Board of Nursing ("SDBON") and have in place a written Collaborative Agreement approved by the SDBON, or have completed 1,040 practice hours under a physician, certified nurse practitioner or certified nurse midwife.

Licensing of a CNP and CNM

In order to be licensed as a CNP or a CNM, the person must be licensed by the SDBON as a registered nurse, complete a training program approved by the SDBON, and pass any examinations which the SDBON may require. Applicants must also submit to a criminal background check. The statute does not provide that a person may be denied licensure based on the outcome of the background check, but it can be logically inferred that the Board may refuse to grant licensure or approve a Collaborative Agreement based on the findings of the background check.

Importantly, there must also exist a written Collaborative Agreement between the CNP or CNM and a collaborating physician. The agreement should delineate the roles and responsibilities of both the collaborating physician and the prospective CNP or CNM. The scope of practice, as described below, should be included so the licensee knows what procedures or functions he or she can perform or under what circumstances the licensee must consult with the physician. It is advisable for the parties to establish a method for initial and continuing evaluation of the CNP's or CNM's competency. Some ways to do this could be for the physician to assess the nurse's skills by conferring together on a case, scheduling periodic joint review of charts, and reviewing interactions to assess clinical judgment and documentation

abilities. If the situation requires it, the agreement should identify any limitations that are unique to the parties' health care setting. Describing the details of each other's expectations and responsibilities is important to ensure an effective and active collaboration.

In order to qualify as a collaborating physician, the person must be licensed as a physician and maintain the written Collaborative Agreement. A collaborating physician may collaborate with as many CNPs or CNMs as the SDBON will allow, up to a maximum of four (4) full-time equivalents. One or more CNPs or CNMs may collaborate with two or more collaborating physicians.

No person may practice or offer to practice as a certified nurse practitioner or certified nurse midwife in this state unless the person is currently licensed to practice pursuant to this chapter. However, upon application and payment of the required fee the board may issue a temporary permit to practice as a nurse practitioner or nurse midwife to an applicant who is waiting for the results of the first examination the applicant is eligible to take after completion of an approved program. An applicant issued a temporary permit under this section shall initially receive thirty days of supervision by direct personal contact with a licensed physician, certified nurse practitioner, or certified nurse midwife that holds an unencumbered license to practice. Thereafter, and until expiration of the temporary permit, the supervision shall include two, one-half business days per week of supervision by direct personal contact. The permit shall become invalid upon notification to the applicant of the results of the first examination.

Upon application and payment of the required fee the board may issue a license to practice as a certified nurse practitioner or certified nurse midwife by endorsement to an applicant who has been licensed as a certified nurse practitioner or certified nurse midwife under the laws of another state, territory, or foreign country, if, in the opinion of the board, the applicant meets the qualifications required of a certified nurse practitioner or a certified nurse midwife in this state.

Upon application and payment of the required fee the board may issue a temporary permit to an applicant holding a current license as a certified nurse practitioner or certified nurse midwife from any other state or territory awaiting endorsement. This permit shall bear an issuance date and a date when it becomes invalid, and the period of time between the two dates may not exceed one hundred twenty days.

No person may be licensed to practice as a certified nurse practitioner or certified nurse midwife unless the person:

- (1) Is currently licensed by the Board of Nursing as a registered nurse or has a privilege to practice;
- (2) Has completed an approved program for the preparation of certified nurse practitioners or certified nurse midwives;
- (3) Has passed any examination, written or oral, or both, which the board may require; and
- (4) Has completed a minimum of one thousand forty practice hours as a licensed certified nurse practitioner or certified nurse midwife; or
- (5) Has a written collaborative agreement with a physician, licensed pursuant to chapter 36-4, or a certified nurse practitioner or certified nurse midwife licensed under this chapter, to meet the one thousand forty hour practice requirement; and
- (6) Is otherwise qualified under § 36-9A-29.

The practice in this state as a certified nurse practitioner or certified nurse midwife is regulated by the SDBON. The board may license, supervise the practice, and revoke or suspend licenses or otherwise discipline any person applying for or practicing as a certified nurse practitioner or certified nurse midwife. The board shall conduct its business in accordance with chapter 36-9.

Certified Nurse Practitioner's Scope of Practice

In addition to the registered nurse scope of practice, as defined in § 36-9-3, and within the certified nurse practitioner role and population focus, a certified nurse practitioner may perform the following advanced practice registered nursing scope:

- (1) Conduct an advanced assessment;
- (2) Order and interpret diagnostic procedures;

- (3) Establish primary and differential diagnoses;
- (4) Prescribe, order, administer, and furnish therapeutic measures as follows:
 - (a) Diagnose, prescribe, and institute therapy or referrals of patients to health care agencies, health care providers, and community resources;
 - (b) Prescribe, procure, administer, and furnish pharmacological agents, including over the counter, legend, and controlled drugs or substances listed on Schedule II in chapter 34-20B;
 - (c) Plan and initiate a therapeutic regimen that includes ordering and prescribing nonpharmacological interventions, including durable medical equipment, medical devices, nutrition, blood and blood products, diagnostic, and supportive services including home health care, hospice, and physical and occupational therapy; and
 - (d) Write a chemical or physical restraint order when the patient may do personal harm or harm others;
- (5) Perform a physical examination for the determination of participation in athletics or employment duties;
- (6) Complete and sign official documents such as death certificates, birth certificates, and similar documents required by law; and
- (7) Delegate and assign therapeutic measures to assistive personnel.

As a matter of good patient care and to limit exposure to malpractice and other liability claims, the AMA and SDSMA recommend that the collaborating physician and CNP jointly develop and agree upon the terms of treatment protocols and guidelines that include the duties and responsibilities of the CNP and care the CNP may and may not provide under the Collaborative Agreement. The protocols should be signed and dated by both the collaborating physician and CNP and copies kept in the offices of both the collaborating physician and the CNP. The protocols and guidelines should be reviewed, updated, and re-signed periodically (at least once every two [2] years). See American Medical Association Policy H-160.950 – Guidelines for Integrated Practice of Physician and Nurse Practitioner.

SDSMA recommends that the collaborating physician conduct patient chart reviews and maintain a log of the charts that have been reviewed.

It is also strongly recommended that the collaborating physician make appropriate arrangements for insurance covering the potential liability of both the physician and the CNP. Insurance may be provided through a policy purchased by the collaborating physician or one purchased by the CNP. If the policy is purchased by the CNP, the collaborating physician should take steps to verify the insurance has been purchased and remains in effect. Generally speaking, insurance companies and agencies will not agree to provide notice of cancellation or non-renewal, so it would be prudent for the collaborating physician to periodically request proof that the policy is still in effect.

In many cases, the employer of the CNP and the collaborating physician will be the same entity and the employer will purchase and maintain insurance coverage. Even in those circumstances, prudence dictates that the physician confirms that the joint employer is providing appropriate coverage for both the CNP and the collaborating physician.

South Dakota law requires the CNP, but not the collaborating physician, to keep the SDBON informed concerning the status of the CNP's Collaborative Agreements. In order to help mitigate the possibility of liability claims against the former collaborating physician for acts or omissions after a Collaborative Agreement is terminated, SDSMA recommends that the collaborating physician independently inform the SDBON if a Collaborative Agreement is terminated.

In order to avoid patient confusion and possible claims of violations of consumer protection and other applicable laws, SDSMA recommends that signage, placards, lab coats, name tags, and other identifying markings should clearly refer to the CNP as such. The CNP, staff, and others should not refer to the CNP as "doctor," and should not do so even if the CNP has been awarded a doctorate degree.

Certified Nurse Midwife's Scope of Practice

In addition to the registered nurse scope of practice, as defined in § 36-9-3, and within the certified nurse midwife role and population focus, a properly licensed nurse midwife may perform the following advanced practice registered nursing scope:

- (1) Conduct an advanced assessment;
- (2) Order and interpret diagnostic procedures;

- (3) Manage the provision of women's health care throughout the lifespan, from adolescence through post menopause, including:
 - (a) Establishing primary and differential diagnoses;
 - (b) Managing prenatal care;
 - (c) Managing intrapartum care; and
 - (d) Managing postpartum care of the mother-baby unit;
- (4) Manage sexually transmitted infections in males;
- (5) Prescribe, order, administer, and furnish therapeutic measures as follows:
 - (a) Diagnose, prescribe, and institute therapy or referrals of patients to health care agencies, health care providers, and community resources;
 - (b) Prescribe, procure, administer, and furnish pharmacological agents, including over the counter, legend, and controlled drugs or substances listed on Schedule II in chapter 34-20B; and
 - (c) Plan and initiate a therapeutic regimen that includes ordering and prescribing nonpharmacological interventions, including durable medical equipment, medical devices, nutrition, blood and blood products, and diagnostic and supportive services including home health care, physical and occupational therapy;
- (6) Complete and sign official documents such as death certificates, birth certificates, and similar documents required by law; and
- (7) Delegate and assign therapeutic measures to assistive personnel.

With regard to CNMs, it is important to note that South Dakota law also authorizes the operation of non-hospital “birth centers” under regulations promulgated by the South Dakota Department of Health. Due to the differences in the services generally available in a non-hospital birth center and a traditional hospital, the physician is encouraged to carefully consider his or her potential exposure to additional liability when considering entry into a Collaborative Agreement with a CNM practicing in a birth center.

Conclusion

Certified Nurse Practitioners and Certified Nurse Midwives may independently provide certain direct patient care services, provided those professionals have met the requirement of 1,040 care hours or are acting in collaboration with a physician, certified nurse practitioner, or certified nurse midwife. The professional’s direct patient care practice must be within the professional’s personal abilities and skills. The supervising or collaborating physician may expose him- or herself to potential liability for the acts or omissions of the supervised or collaborating professional; therefore, care should be taken to provide appropriate supervision or collaboration and to provide for appropriate insurance coverage. In addition, the SDSMA advises that collaboration should be consistent with the nature of the physician’s practice and area of expertise.

Sources: American Medical Association Policy H-160.950 – Guidelines for Integrated Practice of Physician and Nurse Practitioner Certified Nurse Midwife and Practice Guidelines (appended hereto)

Cross-References: Complaint Investigations and Hearings of the S.D. Board of Medical and Osteopathic Examiners; Licensure



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