

July 19, 2017

Betsy Houchen, R.N., M.S., J.D.
Executive Director
Board of Nursing
17 South High Street, Suite 400
Columbus, Ohio 43215-7410

SYLLABUS:

2017-022

1. Pursuant to R.C. 4723.43(C), an advanced practice registered nurse designated as a certified nurse practitioner may provide services for acute illnesses, so long as the services are consistent with the nurse's formal education, clinical experience, and national certification, and the services are provided in accordance with rules adopted by the Board of Nursing.
2. Whether a certified nurse practitioner who is not nationally certified in acute care may engage in acute care practice based upon post-graduate clinical experience obtained in the course of employment and training incident to that employment shall be determined by the Board of Nursing.
3. The Board of Nursing may require a certified nurse practitioner to obtain national certification in acute care if the Board of Nursing determines that the certification is necessary to document that the certified nurse practitioner has the requisite education, knowledge, skills, and abilities to engage in acute care practice.



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OPINION NO. 2017-022

Betsy Houchen, R.N., M.S., J.D.
Executive Director
Board of Nursing
17 South High Street, Suite 400
Columbus, Ohio 43215-7410

Dear Executive Director Houchen:

You have requested an opinion about the qualifications necessary for a certified nurse practitioner to engage in acute care practice.¹ Specifically, you ask whether a certified nurse practitioner who is not nationally certified in acute care may engage in acute care practice based upon post-graduate clinical experience obtained in the course of employment and training incident to that employment.²

Provision of Acute Care by a Certified Nurse Practitioner

In Ohio, a certified nurse practitioner holds a license to practice nursing as an advanced practice registered nurse³ and is designated by the Board of Nursing as a certified nurse practitioner.

¹ Your letter explains that “acute care practice” refers to the “diagnosis of acute conditions and/or management of unstable or critically ill patients.” For the purpose of this opinion, we understand your definition of “acute care practice” to be equivalent to the phrase “services for acute illnesses” in R.C. 4723.43(C).

² According to the Board of Nursing, “nationally certified in acute care” requires a certified nurse practitioner to hold a certification in adult-gerontology acute care or pediatric acute care from a national certifying organization that is approved by the Board of Nursing.

³ For the purpose of R.C. Chapter 4723 (nurses), an “advanced practice registered nurse” is defined as:

an individual who holds a current, valid license issued under [R.C. Chapter 4723] that authorizes the practice of nursing as an advanced practice registered nurse and is designated as any of the following:

- (1) A certified registered nurse anesthetist;
- (2) A clinical nurse specialist;

R.C. 4723.42(A). A certified nurse practitioner's scope of practice is generally set forth in R.C. 4723.43(C), which provides, in pertinent part:

A nurse authorized to practice as a certified nurse practitioner, in collaboration with one or more physicians or podiatrists,⁴ may provide preventive and primary care services, *provide services for acute illnesses*, and evaluate and promote patient wellness within the nurse's nursing specialty, *consistent with the nurse's education and certification, and in accordance with rules adopted by the board*. (Emphasis and footnote added.)

Thus, a certified nurse practitioner may engage in acute care practice to the extent that providing services for acute illnesses is consistent with the certified nurse practitioner's education and certification, and is in accordance with rules adopted by the Board of Nursing. To determine whether a certified nurse practitioner may provide services for acute illnesses without being nationally certified in acute care, we must decipher the meaning of "education and certification" in R.C. 4723.43(C).

We begin with the meaning of "education" in R.C. 4723.43(C). R.C. 4723.41(A)(2) requires an applicant for a license to practice nursing as an advanced practice registered nurse to "[s]ubmit documentation satisfactory to the board that the applicant has earned a master's or doctoral degree with a major in a nursing specialty or in a related field that qualifies the applicant to sit for the certification examination of a national certifying organization approved by the board under [R.C. 4723.46]."⁵ In addition, a "certified nurse practitioner may provide to individuals and groups nursing

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- (3) A certified nurse-midwife;
 - (4) A certified nurse practitioner.

R.C. 4723.01(O).

⁴ A certified nurse practitioner is required to enter into a standard care arrangement with each physician or podiatrist with whom the certified nurse practitioner collaborates. R.C. 4723.431(A). A physician or podiatrist with whom a certified nurse practitioner collaborates "must be authorized to practice in this state and, except as provided in [R.C. 4723.431(D)], practice in a specialty that is the same as or similar to the nurse's nursing specialty." R.C. 4723.431(A); 11A Ohio Admin. Code 4723-8-04(B) ("[a] certified nurse-midwife, certified nurse practitioner, or clinical nurse specialist engaged in the practice of the nurse's specialty, shall enter into a written standard care arrangement with one or more collaborating physicians or podiatrists whose practice is the same or similar to the nurse's practice").

⁵ If an applicant is applying to be a certified registered nurse anesthetist, certified nurse-midwife, or certified nurse practitioner by endorsement because the applicant practices in another state and obtained certification on or before December 31, 2000, the applicant "is not required to have earned a master's or doctoral degree with a major in a nursing specialty or in a related field that qualifies the applicant to sit for the certification examination." R.C. 4723.41(B)(2)(a).

care that requires knowledge and skill obtained from advanced formal education and clinical experience.” R.C. 4723.43; *see also* R.C. 4723.01(P) (the “[p]ractice of nursing as an advanced practice registered nurse’ means providing to individuals and groups nursing care that requires knowledge and skill obtained from advanced formal education, training, and clinical experience”); 11A Ohio Admin. Code 4723-8-02(A) (“[a]n advanced practice registered nurse shall provide to patients nursing care that requires knowledge and skill obtained from advanced formal education, which includes a clinical practicum, and clinical experience as specified in [R.C. 4723.41 and R.C. 4723.43] and this chapter”); rule 4723-8-02(B)(1) (“[e]xcept as otherwise precluded by law or rule, each advanced practice registered nurse shall practice in accordance with ... [t]he advanced practice registered nurse’s education and clinical experience”). Therefore, R.C. 4723.41(A) and the administrative rules indicate that “education” in R.C. 4723.43(C) means a certified nurse practitioner’s formal education and clinical experience.⁶

We now consider the meaning of “certification” in R.C. 4723.43(C). The Board of Nursing approves national certifying organizations to examine and certify advanced practice registered nurses to practice as certified registered nurse anesthetists, clinical nurse specialists, certified nurse-midwives, or certified nurse practitioners. R.C. 4723.46(A) (the Board of Nursing shall “establish a list of national certifying organizations approved by the board to examine and certify advanced practice registered nurses to practice nursing specialties”).⁷ R.C. 4723.41(A)(3) requires an applicant for a

⁶ “Clinical experience,” as that term is used in R.C. Chapter 4723, is not defined. “Clinical” is defined as “[f]ounded on actual experience observation and treatment of patients as distinguished from data or facts obtained from other sources.” *Taber’s Cyclopedic Medical Dictionary* 397 (18th ed. 1997); *see also* 11A Ohio Admin. Code 4723-5-01(F), as reprinted in 2016-2017 Ohio Monthly Record, pamphlet 9, at p. 2-2476 (eff. April 1, 2017) (“clinical experience,” for the purpose of Ohio Admin. Code Chapter 4723-5 (nursing education programs), is “an activity planned to meet course objectives or outcomes and to provide a nursing student with the opportunity to practice cognitive, psychomotor, and affective skills in the supervised delivery of nursing care to an individual or group of individuals who require nursing care”). Therefore, a certified nurse practitioner’s knowledge and skills gained while treating patients constitutes clinical experience.

⁷ The following requirements shall be met for a national certifying organization to be approved by the Board of Nursing:

- (1) Be national in the scope of its credentialing;
- (2) Have an educational requirement beyond that required for registered nurse licensure;
- (3) Have practice requirements beyond those required for registered nurse licensure;
- (4) Have testing requirements beyond those required for registered nurse licensure that measure the theoretical and clinical content of a nursing specialty, are developed in accordance with accepted standards of validity and reliability, and are

license to practice nursing as an advanced practice registered nurse to “[s]ubmit documentation satisfactory to the board of having passed the certification examination of a national certifying organization approved by the board under [R.C. 4723.46] to examine and certify, as applicable, nurse-midwives, registered nurse anesthetists, clinical nurse specialists, or nurse practitioners[.]” *See also* rule 4723-8-02(B)(2) (“[e]xcept as otherwise precluded by law or rule, each advanced practice registered nurse shall practice in accordance with ... [t]he advanced practice registered nurse’s national certification as provided in [R.C. 4723.41]”).

It has been asserted that “national certification as provided in [R.C. 4723.41]” in rule 4723-8-02(B)(2) distinguishes the certification examination for a particular type of advanced practice registered nurse from the certification examinations for one of the other types of advanced practice registered nurses (*i.e.*, certified nurse practitioner, certified nurse-midwives, certified registered nurse anesthetists, and clinical nurse specialists) and does not refer to a practice area corresponding to one of the various nurse practitioner certification examinations (*e.g.*, adult-gerontology acute care, pediatric primary care, or family). R.C. 4723.41(A)(3) requires an applicant to “[s]ubmit documentation satisfactory to the board of having passed the certification examination of a national certifying organization *approved by the board under [R.C. 4723.46] to examine and certify*, as applicable, nurse-midwives, registered nurse anesthetists, clinical nurse specialists, or nurse practitioners[.]” (Emphasis added.) The statute’s reference to the four types of advanced practice registered nurses modifies the organizations that the Board of Nursing approves to examine and certify advanced practice registered

open to registered nurses who have successfully completed the educational program required by the organization;

(5) Issue certificates to advanced practice registered nurses, including certified registered nurse anesthetists, clinical nurse specialists, certified nurse-midwives, or certified nurse practitioners;

(6) Periodically review the qualifications of advanced practice registered nurses, including certified registered nurse anesthetists, clinical nurse specialists, certified nurse-midwives, or certified nurse practitioners.

R.C. 4723.46(A). As used in R.C. Chapter 4723, “nursing specialty” means the Board of Nursing’s designation of an advanced practice registered nurse as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner. R.C. 4723.01(V); *see also* R.C. 4723.41(A).

Currently, the Board of Nursing has approved the following organizations as national certifying organizations: the American Academy of Nurse Practitioners Certification Board; the American Association of Critical-Care Nurses Certification Corporation; the American Midwifery Certification Board; the American Nurses Credentialing Center; the Hospice and Palliative Credentialing Center; the National Board of Certification and Recertification for Nurse Anesthetists; the National Certification Corporation; the Oncology Nursing Certification Corporation; and the Pediatric Nursing Certification Board.

nurses. We agree that “the certification examination of a national certifying organization” in R.C. 4723.41(A)(2) does not specify a type of nurse practitioner certification examination that an applicant is required to take. However, the phrase “the certification examination of a national certifying organization” may reasonably be read to refer to both a certification examination that is relevant to the type of advanced practice registered nurse the applicant is applying to be, as well as a certification examination corresponding to a particular type of nursing care that an advanced practice registered nurse will provide once licensed by the Board of Nursing. Thus, the statement in rule 4723-8-02(B)(2) that “each advanced practice registered nurse shall practice in accordance with ... [t]he advanced practice registered nurse’s national certification as provided in [R.C. 4723.41]” means that the advanced practice registered nurse shall practice in accordance with whichever certification examination the nurse has taken. Therefore, “certification” in R.C. 4723.43(C) means the certification obtained by an advanced practice registered nurse that the nurse has successfully completed a certification examination administered by an approved national certifying organization.

Based upon the meaning of “education and certification” in R.C. 4723.43(C), it is evident that a certified nurse practitioner may provide services for acute illnesses, so long as the services are consistent with the nurse’s formal education, clinical experience, and national certification. R.C. 4723.43(C) also requires services for acute illnesses to be provided in accordance with the rules adopted by the Board of Nursing. 11A Ohio Admin. Code 4723-4-05(D) addresses the provision of a particular type of care by a certified nurse practitioner, and states:

A certified nurse-midwife, certified nurse practitioner, certified registered nurse anesthetist, or clinical nurse specialist may provide care within their specialty provided:

- (1) The nurse obtains *education* that emanates from a recognized body of knowledge *relative to the nursing care* to be provided;
- (2) The nurse demonstrates *knowledge, skills, and abilities necessary to provide the nursing care*; and
- (3) The nurse maintains *documentation satisfactory to the board* of meeting the requirements set forth in paragraphs (D)(1) and (D)(2) of this rule. (Emphasis added.)

This means that an applicant for a license to practice nursing as an advanced practice registered nurse is required to maintain documentation that the Board of Nursing deems is sufficient to demonstrate that the nurse has obtained the requisite education, knowledge, skills, and abilities that are related to the provision of a particular type of nursing care.

Even though R.C. 4723.41, R.C. 4723.43, and rule 4723-8-02(B)(2) do not expressly state that a certified nurse practitioner is required to be nationally certified in acute care in order to provide services for acute illnesses, the Board of Nursing’s authority to regulate and license advanced practice registered nurses includes authority to determine what education, documentation, and certification is necessary to demonstrate that a certified nurse practitioner has obtained the education, knowledge,

skills, and abilities that are needed to safely and proficiently provide a particular type of care.⁸ While knowledge and skills obtained from clinical experience are components of the education that prepares a certified nurse practitioner to provide services for acute illnesses, the provision of those services is also contingent upon a certified nurse practitioner's certification. The use of "and" in "education and certification" in R.C. 4723.43(C) indicates that the services provided by a certified nurse practitioner shall be consistent with both the nurse's education and certification. The amount, type, and combination of formal education, clinical experience, and certification necessary to practice acute care are matters squarely within the Board of Nursing's expertise, discretion, and statutory authority to determine.

The Board of Nursing is authorized to determine whether a certified nurse practitioner is providing, pursuant to R.C. 4723.43(C), services for acute illnesses that are consistent with the nurse's education and certification, and in accordance with rules the Board of Nursing has adopted and promulgated. Consequently, if the Board of Nursing determines that a certified nurse practitioner's post-graduate clinical experience obtained in the course of employment, in combination with the nurse's formal education and certification, demonstrates that the nurse has sufficient education, knowledge, skills, and abilities to practice acute care, the Board of Nursing may determine that a certified nurse practitioner who is not nationally certified in acute care may engage in acute care practice. Alternatively, if the Board of Nursing determines that national certification in acute care is necessary to document that a certified nurse practitioner has the requisite education, knowledge, skills, and abilities to practice acute care, the Board of Nursing may require a certified nurse practitioner to obtain national certification in acute care.

It is beyond the scope of an Attorney General opinion to definitively determine whether a certified nurse practitioner who is not nationally certified in acute care may engage in acute care practice based upon post-graduate clinical experience obtained in the course of employment. Rather, the General Assembly has conferred the authority to make that determination upon the Board of Nursing. The Board of Nursing has been conferred authority to determine what qualifications are necessary for a licensee to possess, in part, because the Board of Nursing is composed of members of the nursing profession. R.C. 4723.02 (twelve of the thirteen members of the Board of Nursing hold active nurse's licenses and two of those twelve hold a license to practice as an advanced practice registered nurse). In addition, within the Board of Nursing is the Advisory Committee on Advanced Practice Registered Nursing that "shall advise the board regarding the practice and regulation of advanced practice registered nurses[.]" R.C. 4723.493(A), (D). The expertise of the members of the

⁸ The General Assembly has conferred upon the Board of Nursing authority to license advanced practice registered nurses and to adopt rules necessary to administer the provisions of R.C. Chapter 4723. See R.C. 4723.06(A)(1) (the Board of Nursing shall "[a]dminister and enforce the provisions of [R.C. Chapter 4723]" and the rules promulgated by the board in accordance with R.C. Chapter 4723); R.C. 4723.07(C) (the Board of Nursing shall adopt rules that establish "[c]riteria that applicants for licensure must meet to be eligible to take examinations for licensure"); R.C. 4723.07 ("[t]he [Board of Nursing] may adopt other rules necessary to carry out the provisions of [R.C. Chapter 4723]").

Board of Nursing qualifies them to make decisions concerning the scope of practice and the education and certification of nurses it licenses.

The Board of Nursing may promulgate, in accordance with R.C. Chapter 119, rules that are “necessary to carry out the provisions of [R.C. Chapter 4723].” R.C. 4723.07; *see* 1998 Op. Att’y Gen. No. 98-035, at 2-208 (“[i]t is generally understood that ‘[t]he purpose of administrative rulemaking is to facilitate the administrative agency’s placing into effect the policy declared by the General Assembly in the statutes to be administered by the agency’” (quoting *Carroll v. Dep’t. of Admin. Servs.*, 10 Ohio App. 3d 108, 110, 460 N.E.2d 704 (Franklin County 1983))). An administrative agency’s explanation of the meaning of existing statutes or regulations does not come within the scope of R.C. Chapter 119. *See State ex rel. Saunders v. Indus. Comm’n of Ohio*, 101 Ohio St. 3d 125, 2004-Ohio-339, 802 N.E.2d 650, at ¶33 (“[d]ocuments that explain rather than expand, fall outside R.C. Chapter 119”). However, when an administrative agency’s determination constitutes more than merely an interpretation of a statute or existing rule and, rather, establishes a new standard that is intended to have uniform and general application, the agency is required to implement the determination as a rule in accordance with R.C. Chapter 119. *State ex rel. Saunders v. Indus. Comm’n of Ohio* at ¶27 (“[t]he pivotal issue in determining the effect of a document is whether it enlarges the scope of the rule or statute from which it derives rather than simply interprets it”); *Ohio Nurses Ass’n v. State Bd. of Nursing Ed. and Nurse Registration*, 44 Ohio St. 3d 73, 76, 540 N.E.2d 1354 (1989); 1995 Op. Att’y Gen. No. 95-009, at 2-46; *cf. OPUS III-VII Corp. v. Ohio State Bd. of Pharmacy*, 109 Ohio App. 3d 102, 112, 671 N.E.2d 1087 (Franklin County 1996) (“the board may advise those affected of the meaning that it attaches to one of its rules. However, in so doing, an administrative agency may not expand the scope of the rule without complying with the rulemaking provisions of R.C. Chapter 119”).

A determination by the Board of Nursing that a certified nurse practitioner may not practice acute care without being nationally certified in acute care is arguably an interpretation of the meaning of R.C. 4723.41, R.C. 4723.43(C), and rule 4723-8-02(B)(2). *See State ex rel. Saunders v. Indus. Comm’n of Ohio* at ¶42 (Industrial Commission’s memorandum to hearing officers explaining the commission’s interpretation of a statute in accordance with caselaw “is an interpretation exempt from R.C. Chapter 119 and not a rule falling thereunder”); *Ohio Podiatric Med. Ass’n v. Taylor*, 10th Dist. No. 11AP-916, 2012-Ohio-2732, at ¶38 (Ohio Department of Insurance’s letter and legal memorandum explaining that the statute requires reimbursement but not parity in the amount of reimbursement constitute the interpretation of a statute and do not require the department to engage in the rulemaking process of R.C. Chapter 119). However, a court may conclude that the Board of Nursing’s interpretation has the effect of establishing a new standard that is intended to have general application to all certified nurse practitioners licensed by the Board of Nursing, thereby triggering an obligation to comply with R.C. Chapter 119. *See Ohio Nurses Ass’n v. State Bd. of Nursing Ed. and Nurse Registration*, 44 Ohio St. 3d at 76 (position paper addressing the authority of licensed practical nurses to administer intravenous fluids establishes a new rule and is not merely an interpretation of existing rules or statutes); *DelBianco v. Ohio State Racing Comm’n*, 10th Dist. No. 01AP-395, 2001 Ohio App. LEXIS 4626, at *14 (the Racing Commission’s policy setting a threshold concentration limit for a substance that naturally occurs in a horse’s blood, when the administrative rule does not provide such a limit, constitutes a rule that should have been adopted pursuant to R.C. Chapter 119);

Livisay v. Ohio Bd. of Dietetics, 73 Ohio App. 3d 288, 290-91, 596 N.E.2d 1129 (Franklin County 1991) (board's interpretation of meaning of "another related field acceptable to the board" in R.C. 4759.06(D) to require a college course in chemistry constituted a "rule" for purposes of R.C. Chapter 119); *see generally* R.C. 119.01(C) (as used in R.C. 119.01-.13, a "rule" is "any rule, regulation, or standard, having a general and uniform operation, adopted, promulgated, and enforced by any agency under the authority of the laws governing such agency, and includes any appendix to a rule. 'Rule' does not include any internal management rule of an agency unless the internal management rule affects private rights and does not include any guideline adopted pursuant to [R.C. 3301.0714]").

If the Board of Nursing intends to generally and uniformly apply and enforce a requirement that a certified nurse practitioner shall be nationally certified in acute care in order to provide services for acute illnesses, the board should adopt a rule that expressly states that qualification standard. In promulgating such a rule under R.C. Chapter 119, the board may receive comments from interested parties and consider whether a grace period or an exception to the requirement of national certification in acute care based upon particular post-graduate clinical experience or advanced certification is appropriate.

Conclusions

Based upon the foregoing, it is my opinion, and you are hereby advised that:

1. Pursuant to R.C. 4723.43(C), an advanced practice registered nurse designated as a certified nurse practitioner may provide services for acute illnesses, so long as the services are consistent with the nurse's formal education, clinical experience, and national certification, and the services are provided in accordance with rules adopted by the Board of Nursing.
2. Whether a certified nurse practitioner who is not nationally certified in acute care may engage in acute care practice based upon post-graduate clinical experience obtained in the course of employment and training incident to that employment shall be determined by the Board of Nursing.
3. The Board of Nursing may require a certified nurse practitioner to obtain national certification in acute care if the Board of Nursing determines that the certification is necessary to document that the certified nurse practitioner has the requisite education, knowledge, skills, and abilities to engage in acute care practice.

Very respectfully yours,

A handwritten signature in blue ink that reads "Michael Dewine". The signature is written in a cursive, flowing style.

MICHAEL DEWINE
Ohio Attorney General