



KENTUCKY BOARD OF NURSING

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ADVISORY OPINION STATEMENT

**ROLE OF NURSES IN MAINTAINING CONFIDENTIALITY OF PATIENT
INFORMATION**

The Kentucky Board of Nursing is authorized by Kentucky Revised Statutes (KRS) Chapter 314 to regulate nurses, nursing education and practice, promulgate regulations and to issue advisory opinions on nursing practice, in order to assure that safe and effective nursing care is provided by nurses to the citizens of the Commonwealth.

The Kentucky Board of Nursing issues advisory opinions as to what constitutes safe nursing practice. As such, an opinion is not a regulation of the Board and does not have the force and effect of law. It is issued as a guideline to licensees who wish to engage in safe nursing practice.

Opinion: ROLE OF NURSES IN
MAINTAINING CONFIDENTIALITY OF
PATIENT INFORMATION

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Accountability and Responsibility of Nurses

In accordance with KRS 314.021(2), nurses are responsible and accountable for making decisions that are based upon the individuals' educational preparation and experience in nursing, and requires licensees to practice nursing with reasonable skill and safety. Nursing practice should be consistent with the *Kentucky Nursing Laws*, established standards of practice, and be evidence based.

Rationale for Advisory Opinion

The Kentucky Board of Nursing has received multiple inquiries on the role of nurses in the maintenance (use and disclosure) of confidential patient information, and nurse behaviors that would constitute a breach of confidentiality subjecting a nurse to potential disciplinary action by the Board. Additionally, the Kentucky Board of Nursing is receiving increasing complaints alleging that nurses have misused social media. As such, the Board has deemed that guidance to nurses regarding social media is warranted. In preparing this opinion, the Board reviewed and analyzed various recommendations published by professional and regulatory agencies that address the use of social media, professional boundaries, and nursing professionalism.

Nursing Interventions identified in this Advisory Opinion Statement include:

- The Role of Nurses concerning:
 - Patient Confidentiality
 - Social Media and Confidentiality

Advisory Opinion: Patient Confidentiality

The term “confidential patient information” as used in this statement refers to individually identifiable health and personal information and recognizes a patient’s expectation of and right to privacy in the maintenance of this information. Such information would include, but is not limited to (a) information related to the past, present, or future physical or mental health of an individual and treatment and (b) any information that identifies the individual or in which there is a reasonable basis to believe that the information can be used to identify the individual.

Code of Ethics for Nurses

The *American Nurses Association’s Code of Ethics for Nurses* (2015), Provision 3.1, recognizes that nurses have a duty to maintain confidentiality of patient information. “...The nurse has a duty to maintain confidentiality of all patient information, both personal and clinical in the work setting and off duty in all venues including social media or any other means of communication.

Because of rapidly evolving communication technology and the porous nature of social media, nurses must maintain vigilance regarding postings, images, recordings, or commentary that intentionally or unintentionally breaches their obligation to maintain and protect patients’ rights to privacy and confidentiality...Nurses are responsible for providing accurate, relevant data to members of the healthcare team and others who have a need to know. The duty to maintain confidentiality is not absolute and may be limited, as necessary, to protect the patient or other parties, or by law or regulation such as mandated reporting for safety or public health reasons.”

Kentucky Nursing Law

Kentucky Revised Statutes (KRS 314.011) requires that a nurse’s practice be consistent with nationally published nursing standards of practice, and (KRS 314.021) states that acts and decisions be performed with reasonable skill and safety and holds nurses individually responsible and accountable for rendering safe, effective nursing care to patients and for judgments exercised and actions taken in the course of providing care.

As a guide to nurses and employers, the Board advises that a nurse:

1. Is obligated to protect confidential patient information unless required by law to disclose the information,
2. Seeks and releases confidential patient information only when there is a clear and substantial “need to know” basis for the information. A “need to know” basis is one that requires individuals to have information in order to render care or service to a patient, and
3. Discloses confidential patient information to the patient’s family members and others only as permitted by the patient.

Note on De-identification:

According to the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule 45 CFR § 164.514 (2016), “health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not individually identifiable health information”. However, nurses

may breach confidentiality or privacy even if the information is de-identified because there is often still enough information to identify the patient or link the nurse back to the patient.

Advisory Opinion: Social Media and Confidentiality

Social media, if used, should be used in a way that protects patients' privacy and confidentiality and maintains the standards of professional nursing practice.

The National Council of State Boards of Nursing (NCSBN) and the American Nurses Association (ANA) has endorsed guidelines for upholding professional boundaries in a social networking environment. The NCSBN (2011) White Paper: A Nurse's Guide to the Use of Social Media lists actions nurses can take to minimize risk and provides scenarios of unprofessional conduct based on actual events reported to boards of nursing.

Principles for Social Media

- Nurses must not transmit or place online individually identifiable patient information.
- Nurses must observe ethically prescribed professional patient-nurse boundaries.
- Nurses should understand that patients, colleagues, institutions, and employers may view postings.
- Nurses should take advantage of privacy settings and seek to separate personal and professional information online.
- Nurses should bring content that could harm a patient's privacy, rights, or welfare to the attention of appropriate authorities.
- Nurses should participate in developing institutional policies governing online conduct.
- Remember that standards of professionalism are the same online as in any other circumstance.

Tips to Avoid Problems

- Do not share or post information or photos gained through the nurse-patient relationship.
- Maintain professional boundaries in the use of electronic media. Online contact with patients blurs this boundary.
- Do not make disparaging remarks about patients, employers or co-workers, even if they are not identified.
- Do not take photos or videos of patients on personal devices, including cell phones.
- Promptly report a breach of confidentiality or privacy.

The Kentucky Board of Nursing supports both the guidelines and principles of social media use by the NCSBN and ANA.

Consequences for Inappropriate Use of Social Media

There are consequences to the inappropriate use of social media. Potential consequences vary according to the specific breach of trust.

If employment rules were broken, the nurse may face suspension or termination at work. Civil and criminal charges may result from breaches of privacy or confidentiality. Furthermore, the nurse may be subject to personal lawsuits for defamation or invasion of privacy.

Inappropriate use of social media is a violation of Kentucky nursing law. Kentucky Revised Statutes (KRS) 314.091(1)(d),(j), and (n) state that the board shall have power to reprimand, deny, limit, revoke, probate, or suspend any license or credential to practice nursing issued by the board upon proof that the person has:

- Negligently or willfully acted in a manner inconsistent with the practice of nursing;

- Violated any of the provisions of this chapter; or
- Violated the confidentiality of information or knowledge concerning any patient, except as authorized or required by law.

The Kentucky Board of Nursing may investigate a nurse after a report of inappropriate use of social media. As with all complaints received by the Board regarding potential violations of the Kentucky Nursing Laws, each complaint is considered on a case-by-case basis. The facts of each situation are evaluated on an individual basis. Nurses can face disciplinary action ranging from reprimand to loss of license for violating KRS 314.091.

Breaches of Confidentiality

A nurse whose behavior is inconsistent with the guidelines stated above may be charged with being in violation of KRS 314.091(1)(d) "...negligently or willfully acting in a manner inconsistent with the practice of nursing...." or KRS 314.091(1)(n) "...violated the confidentiality of information or knowledge concerning any patient, except as authorized or required by law". For example, a nurse who violates state or federal law, such as HIPAA (Health Insurance Portability and Accountability Act), and/or improperly acquires, uses or discloses confidential patient information is subject to potential disciplinary action by the Board.

As with all complaints received by the Board regarding potential violations of the *Kentucky Nursing Laws*, each complaint is considered on a case-by-case basis. The specific facts of each situation are evaluated on an individual basis.

Determining Scope of Practice

KRS 314.021(2) holds all nurses individually responsible and accountable for the individual's acts based upon the nurse's education and experience. Each nurse must exercise professional and prudent judgment in determining whether the performance of a given act is within the scope of practice for which the nurse is both licensed and clinically competent to perform. In addition to this advisory opinion statement, the Kentucky Board of Nursing issued Advisory Opinion Statement #41 RN/LPN/APRN Scope of Practice Determination Guidelines which contains the KBN Decision-Making Model for Determining Scope of Practice for RNs/LPNs/APRNs providing guidance to nurses in determining whether a selected act is within an individual nurse's scope of practice now or in the future.

Applicable Statutes from the Kentucky Nursing Laws

KRS 314.021(2) states: All individuals licensed or privileged under provisions of this chapter shall be responsible and accountable for making decisions that are based upon the individuals' educational preparation and experience in nursing and shall practice nursing with reasonable skill and safety.

KRS 314.011 Definitions for chapter (sections 6, 8 & 10).

(6) "Registered nursing practice" means the performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of psychological, biological, physical, and social sciences in the application of the nursing process in:

- (a) The care, counsel, and health teaching of the ill, injured, or infirm;
- (b) The maintenance of health or prevention of illness of others;
- (c) The administration of medication and treatment as prescribed by a physician, physician assistant, dentist, or advanced practice registered nurse and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Scope and Standards of Practice or with standards of practice established by nationally accepted

organizations of registered nurses.

Components of medication administration include but are not limited to:

- 1) Preparing and giving medications in the prescribed dosage, route, and frequency, including dispensing medications only as defined in subsection (17)(b) of this section;
 - 2) Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
 - 3) Intervening when emergency care is required as a result of drug therapy;
 - 4) Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;
 - 5) Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
 - 6) Instructing an individual regarding medications;
- (d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care; and
- (e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses;

(8) "Advanced practice registered nursing" means the performance of additional acts by registered nurses who have gained advanced clinical knowledge and skills through an accredited education program that prepares the registered nurse for one (1) of the four (4) APRN roles; who are certified by the American Nurses' Association or other nationally established organizations or agencies recognized by the board to certify registered nurses for advanced practice registered nursing as a certified nurse practitioner, certified registered nurse anesthetist, certified nurse midwife, or clinical nurse specialist; and who certified in at least one (1) population focus. The additional acts shall, subject to approval of the board, include but not be limited to prescribing treatment, drugs, devices, and ordering diagnostic tests. Advanced practice registered nurses who engage in these additional acts shall be authorized to issue prescriptions for and dispense nonscheduled legend drugs as defined in KRS 217.905 and to issue prescriptions for but not to dispense Schedules II through V controlled substances as classified in KRS 218A.020, 218A.060, 218A.080, 218A.100, and 218A.120, under the conditions set forth in KRS 314.042 and regulations promulgated by the Kentucky Board of Nursing on or before August 15, 2006. ... The performance of these additional acts shall be consistent with the certifying organization or agencies' scopes and standards of practice recognized by the board by administrative regulation.

(10) "Licensed practical nursing practice" means the performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:

- (a) The observing and caring for the ill, injured, or infirm under the direction of a registered nurse, practice registered nurse, physician assistant, licensed physician, or dentist;
- (b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board;
- (c) The administration of medication or treatment as authorized by a physician, physician assistant, dentist, or advanced practice registered nurse and as further authorized or limited by the board which is consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally accepted organizations of licensed practical nurses;
- (d) Teaching, supervising, and delegating except as limited by the board; and
- (e) The performance of other nursing acts which are authorized or limited by the board and which are consistent with the National Federation of [Licensed] Practical Nurses' Standards of Practice or with Standards of Practice

References

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