

A Medication Error and Legislation Designed to Punish: The American Association of Nurse Attorneys Defends Just Culture in Nursing

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ABSTRACT

This article was authored by The American Association of Nurse Attorneys (TAANA) in response to a bill proposed by a South Carolina senator that would require revocation of a nurse's license if a medication order was "misread" resulting in an over/undermedication administration. TAANA believes that the proposed law is unconstitutional because it violates due process, usurps the authority of the board of nursing, and does not comport with the Just Culture Model, which promotes patient safety by encouraging a nonpunitive culture of transparency to address medical errors that occur as a result of unintended human error.

Keywords: just culture, medication error, patient safety, punish, unintentional human error

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A home care nurse in South Carolina made a medication error and overmedicated a child with 10 times the prescribed dose of morphine. Sadly, the child, Samuel Cutliff, died 1 month later.¹ The nurse was placed on probation and fined by the South Carolina Board of Nursing. In response to the tragic event, a state senator introduced a bill called "Samuel's Law." This bill, if passed, would require automatic and mandatory revocation of a nurse's license if a medication order is "misread" and a nurse administers an overdose or an underdose of medication resulting in a patient death.²

Although sympathetic to the family for their loss and cognizant of the reality of human fallibility including serious (or even catastrophic) medication error, The American Association of Nurse Attorneys (TAANA) opposes the proposed "Samuel's Law" legislation. TAANA is a nonprofit organization whose membership is composed of primarily professionals holding degrees in both nursing and law. TAANA's mission includes providing education on issues related to health law and policy. TAANA

became, and remains, gravely concerned about the "Samuel's Law" legislation. Believing that reactionary political actions such as "Samuel's Law" poses risks to the practice and professional image of nursing, including advanced practice, and to the regulatory boards of nursing to whose oversight, monitoring, and discipline of the profession is established, TAANA submits a careful review of the multiple problems associated with automatic mandatory licensure revocation for unintended medical error.

Automatic and mandatory revocation of a nursing license without any investigation into the facts, including system-related issues, violates the right of nurses to due process. This legislation also usurps the authority of the state Board of Nursing, which enforces the Nurse Practice Act, has the expertise, and is well equipped to thoroughly investigate and appropriately respond to the infractions by the nurse including applying penalties. Lastly, the proposed legislation violates the "Just Culture Model," which promotes a nonpunitive, transparent, and systematic study of errors and is widely recognized by patient safety

experts as the standard to reduce unintentional errors in health care and to improve patient outcomes.

In response to the Senate Bill 371, “Samuel’s Law,” TAANA formed a task force of its members to research the potential ramifications of the proposed bill. The task force, on behalf of TAANA, composed a 3-part position paper citing the following fundamental legal theories: due process, usurpation of the authority of the Board of Nursing to regulate the practice of nursing, and the doctrine of fairness more commonly known as “Just Culture.”³

TAANA submitted its position paper opposing “Samuel’s Law” to the South Carolina legislative subcommittee reviewing the bill. In response, the subcommittee inserted language to limit the mandatory revocation to nurses who are “willful, wanton, grossly negligent and/or deceitful.” This bill is scheduled for a vote in January 2016. If it passes, it will become law in South Carolina.⁴

TAANA urges nurses everywhere to be aware of health policy and/or legislation being proposed in other states by lawmakers that may impact nursing practice. Lawmakers who do not understand best practice or how to promote a culture of patient safety may be well intentioned but do great harm to the profession’s ability to direct its trajectory nonetheless. Nurses should be proactive in their willingness to educate the public and elected representatives. Blaming nurses offers an immediate solution but fails to consider the deeper issue(s) of medical error and patient safety.

The purpose of this article is to provide practicing nurse practitioners (NPs) with an update concerning a current legal issue that may impact practice by way of licensure. NPs as leaders among nurses are potential educators, prescribers, and role models. In addition, they can be agents for policy change and are among the strongest voices for patient advocacy. The authors would like to caution readers to consult an attorney for specific legal advice pertaining to their practice and to understand that the information presented is of an educational nature and not intended to be construed as specific legal advice.

DUE PROCESS

Due process of the law is a fundamental, constitutional guarantee that constrains government from acting against one’s person, liberty, or property in an “arbitrary” or “capricious” (groundless, purposeless, or dictatorial)

manner. Under due process, before the government can deprive a person of their life, liberty, or property, that individual must be afforded notice of the governmental action and be afforded an opportunity to be heard before such action takes place. Due process may be substantive, created law, or procedural due process, that law that is enforced (individual rights granted that include a mechanism for redress if/when rights are violated). The due process clauses of the 5th and 14th Amendments work together to establish and secure the constitutional bases for freedom from governmental overreach into life, liberty, or property. TAANA maintains that the proposed “Samuel’s Law” violates substantive due process because it is arbitrary and violates the nurse’s right to procedural due process by revocation of the nursing license of which there is a property interest. NPs must remain vigilant concerning matters that govern licensure such as the state’s legislative ability to make changes that may impact their ability to hold and maintain licensure. Revocation without due process could result in an individual’s failure to seek reinstatement and as such the abandonment of one’s nursing career.

USURPATION ROLE OF THE BOARD OF NURSING

Usurpation (or seizing power) may be attributed to the action taken by the State of South Carolina legislature against its own Board of Nursing (Board). Among its many roles, the Board has the legislative authority to investigate all matters of nursing practice whether or not harm results to a patient. Boards of nursing exist across the nation to ensure safe delivery of nursing care to the public, regulate the education and practice of nursing, and appropriately discipline nurses who risk harm to the public. Standards of nursing care are delineated through Nurse Practice Acts established as benchmarks for safe nursing practice. State Boards vary as to who constitutes their membership and how its composition occur, but generally each Board includes nurses with all levels of education and typically includes a member or members of the general public (a consumer). Boards are tasked with performing the duties as set forth by the enabling statutes for their state.⁵ The State of South Carolina as all state legislatures must allow the designated members of its Board to enforce the enabling statutes as enacted by its own legislature. For the South Carolina legislature, having once enacted

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