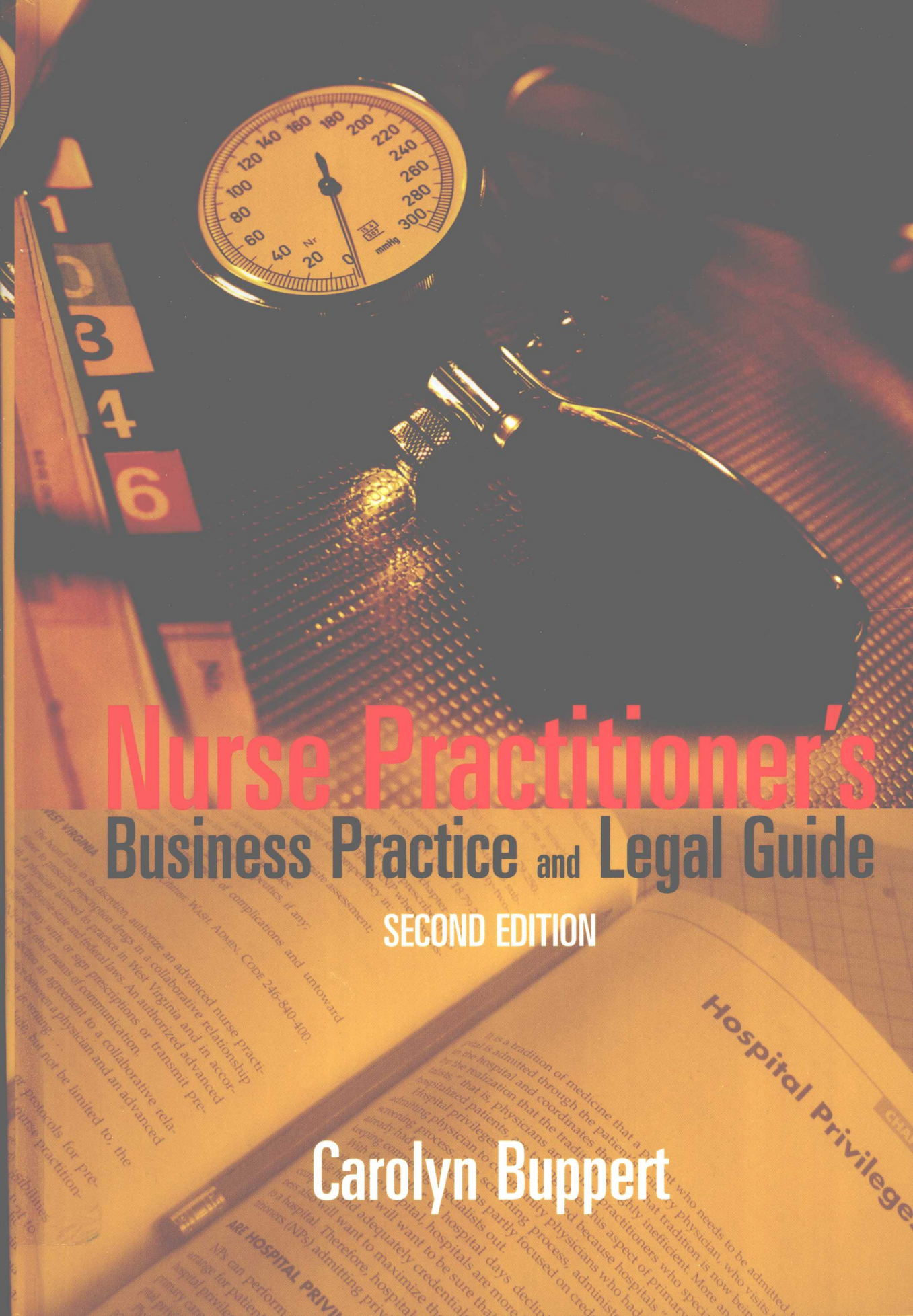

Nurse Practitioner's Business Practice and Legal Guide

SECOND EDITION

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Preface

This book contains the answers to many questions asked of me in my 12 years of practice as an attorney. I specialize in legal issues affecting nurse practitioners. The questions came from nurse practitioners, employers of nurse practitioners, student nurse practitioners and their professors, other attorneys, bureaucrats, and legislators conducting hearings about bills that addressed nurse practitioners.

Nurse practitioners frequently ask questions such as:

- A physician (or hospital or group) wants to hire me to do [fill in a particular health care service]. Can I legally do that?
- An insurance company refuses to pay the bill for a patient's visit with me. What can I do?
- A big company bought my group's practice. The big company is not sure what to do with me. They know nothing about what nurse practitioners can do in our state. Can you tell them about nurse practitioners?
- What should be covered in my employment contract?
- Can I incorporate in a business with physicians?
- I have been working in a trauma center for 4 years. Now I hear that my notes need to be co-signed by a physician. Is that true?
- An internet-based pharmacist refuses to fill a prescription I wrote because I am not a physician. I have the legal authority to prescribe in my state. What can I do?
- I have been working without a contract. Now the company wants me to be on call three nights a week. Do I have to do it?
- I'm writing a paper for my "nurse practitioner role" class on legislative issues affecting nurse practitioners. What are these issues?
- How can I get on a managed care provider panel?
- A group wants to pay me a base salary plus a percentage of billings over $120,000. Is this reasonable?
- What does "incident to a physician's professional services" mean?
- How do I start my own practice?

- I know nothing about how billing is done. Can you tell me how to get reimbursed for my services?

Legislators and bureaucrats frequently ask such questions as:

- How is a nurse practitioner different from a registered nurse?
- Which states allow nurse practitioners to practice independently?
- How does a nurse practitioner know when to consult a physician?
- Doesn't a physician have to supervise everything a nurse practitioner does?
- In how many states can nurse practitioners write prescriptions?

Employers of nurse practitioners frequently ask such questions as:

- I want the nurse practitioner to see my hospitalized patients. Can we get reimbursed for that?
- How can we get paid by Medicare for patient visits to the nurse practitioner?
- We want to put nurse practitioners in nursing homes. Who has to sign and what has to be signed to get them started?
- Who is liable if the nurse practitioner makes a mistake? The nurse practitioner or the physician?

Other attorneys ask:

- A nursing home I represent has hired a nurse practitioner to do administrative work and to see patients. How can we bill for his or her services?
- My clients want to start a network of nurse practitioner practices. What can you tell me about that? Do you know anything about Florida law on nurse practitioners?

Some of the questioners have become clients, and I have done the necessary legal research to answer their questions and have completed the necessary legal documents to carry out their plans. Others will now benefit from those clients.

Nurse practitioners who read this book will have a solid knowledge base to use, whether it be in developing an employment relationship, undertaking a business venture, giving testimony before the state legislature, composing a letter to an insurance company about an unpaid bill, teaching at a school of nursing, or serving as president of a state or national organization. My hope is that once nurse practitioners have this base of knowledge about the business of health care and the legal foundation upon which nurse practitioners function, they can hasten the advancement of their careers.

Some of the medical practitioners asking these questions became clients, allowing me to research the answers and complete the appropriate legal documents for them to further their careers. Now, others will benefit from this extensive legal research.

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CHAPTER 1

What Is a Nurse Practitioner?

Individuals who have never experienced the care of a nurse practitioner (NP)—whether they are physicians, reporters, lawmakers, bureaucrats, lobbyists, or new patients—often request clarification of just who NPs are and what they do.

It is the combination of skills of physician and nurse that seems to confuse people. Yet it is that combination of skills that makes an NP unique.

DEFINITION OF NURSE PRACTITIONER

The term *nurse practitioner* has been given a variety of definitions.

- According to a state NP organization, "Nurse practitioners are registered nurses with one to two years of additional education, which prepares them to provide many of the same services doctors provide. Nurse practitioners work with other health care professionals such as nurses, doctors, therapists, and counselors. Nurse practitioners provide health and wellness care to persons of all ages. Nurse practitioners are legally authorized to diagnose, order laboratory work and X-rays, and prescribe medication."[1]
- According to a national NP organization, "A nurse practitioner is a registered nurse with advanced academic and clinical experience, which enables him or her to diagnose and manage most common and many chronic illnesses. The nurse practitioner works either independently or as a part of a health care team."[2]
- A board of nursing defines NP as "a registered nurse who has obtained additional advanced specialized education."[3]
- According to federal law, "Nurse practitioner means a nurse practitioner who performs such services as such individual is legally authorized to perform (in the state in which the individual performs such services) in accordance with state laws and who meets such training, education and experience required as the Secretary has prescribed in regulations" [42 U.S.C.A. § 1395x(aa)(5)].

- In California state law, "nurse practitioner means a registered nurse who possesses additional preparation and skills in physical diagnosis, psychsocial assessment and management of health-illness needs in primary health care and who has been prepared in a program conforming to board standards as specified in section 1484"[CA. CODE REGS. tit. 16, § 1480(a)].

For state-by-state definitions of the term *nurse practitioner,* see Appendix 1-A.

A NURSE PRACTITIONER, BY ANY OTHER NAME . . .

Other designations sometimes given NPs include *physician extender, mid-level practitioner,* and *advanced-practice nurse.* For a state-by-state listing of states' official terms for NPs, see Appendix 1-B.

Physician Extenders

The term *physician extender* is used by physicians' associations and publications aimed at the physician market, and usually is used to refer collectively to nurse practitioners, clinical nurse specialists, nurse anesthetists, nurse midwives, and physician assistants (PAs).

Mid-Level Practitioners

The term *mid-level practitioner* is used by some physician groups, some states, and the federal government in the Code of Federal Regulation sections dealing with Drug Enforcement Administration (DEA) registration. The DEA defines a mid-level practitioner as follows:

> The term *mid-level practitioner* means an individual practitioner other than a physician, dentist, veterinarian, or podiatrist, who is licensed, registered, or otherwise permitted by the United States or the jurisdiction in which he/she practices to dispense controlled dangerous substances in the course of professional practice. Examples of mid-level practitioners include, but are not limited to health care providers such as nurse practitioners, nurse midwives, nurse anesthetists, clinical nurse specialists, and physician assistants who are authorized to dispense controlled substances by the state in which they practice.
>
> *Citation:* 21 C.F.R. § 1300.01(28).

Some state laws provide a definition of *mid-level practitioner.* For example, in Minnesota, "'Midlevel practitioner' means a nurse practitioner, nurse midwife, nurse anesthetist, advanced clinical nurse specialist, or physician assistant" [MINN. STAT. § 144.1495(b)].

Advanced Practice Nurses

Advanced practice nurse is an umbrella term used by some states and some nursing associations to cover, collectively, NPs, clinical nurse specialists (CNSs), nurse midwives, and nurse anesthetists. NPs differ from other advanced practice nurses in that they offer a wider range of services to a wider portion of the population. Other advanced practice nurses compare with NPs in the following ways:

- *Nurse anesthetist:* Narrow range of services (preoperative assessment, administration of anesthesia, management of postanesthesia recovery) to a narrow base of patients (people having anesthesia)
- *Clinical nurse specialist:* Medium range of services (consultation, research, education, administration, coordination of care, case management, direct care within definition of registered nurse) to a narrow patient base (people under the care of a medical specialist)
- *Certified nurse midwife:* Narrow range of services (well-women gynecologic care; management of pregnancy and childbirth; antepartum and postpartum care) to a medium-sized base of patients (childbearing women)
- *Nurse practitioner:* Wide range of services (evaluation, diagnosis, treatment, education, risk assessment, health promotion, case management, coordination of care, counseling) to a wide base of patients, depending upon area of certification; a family nurse practitioner can have a patient base of any age, gender, or problem

SERVICES PROVIDED BY NPS

NPs may perform any service authorized by a state nurse practice act. Some nurse practice acts are so broad as to allow any service agreed upon by an NP and collaborating physician. Generally, NP services include:

- Obtaining medical histories and performing physical examinations
- Diagnosing and treating health problems
- Ordering and interpreting laboratory tests and X-rays
- Prescribing medications and other treatments
- Providing prenatal care and family planning services
- Providing well-child care and immunizations
- Providing gynecologic examinations and Pap smears
- Providing education about health risks, illness prevention, and health maintenance
- Case management and coordination of care

Typically, NPs have the following duties and responsibilities:

1. Conducts comprehensive medical and social history of individuals, including those who are healthy and those with acute illnesses and chronic diseases
2. Conducts physical examination of individuals, either comprehensive or problem focused
3. Orders, performs, and interprets laboratory tests for screening and for diagnosing
4. Prescribes medications
5. Performs therapeutic or corrective measures, including urgent care
6. Refers individuals to appropriate specialist nurses or physicians or other health care providers
7. Makes independent decisions regarding management and treatment of medical problems identified
8. Performs various invasive/clinical procedures such as suturing, biopsy of skin lesions, and endometrial biopsy, depending upon education, training, patient needs, and written agreement with physician collaborator
9. Prescribes and orders appropriate diet and other forms of treatment such as physical therapy
10. Provides information, instruction, and counseling on health maintenance, health promotion, social problems, illness prevention, illness management, and medication use
11. Evaluates the effectiveness of instruction and counseling and provides additional instruction and counseling as necessary
12. Initiates and participates in research studies and projects
13. Teaches groups of clients about health-related topics
14. Provides outreach health education services in the community
15. Serves as preceptor for medical, nursing, NP, or physician assistant (PA) students
16. Accepts after-hours calls and handles after-hours problems on a rotating schedule
17. Participates in development of pertinent health education materials
18. Participates in development of clinical practice guidelines
19. Initiates and maintains follow-up of noncompliant patients
20. Makes client home visits and provides care in the home as necessary
21. Makes hospital visits and follows hospital care of established patients
22. Consults with other health care providers about established clients who have been admitted to hospital, home care, rehabilitation, or nursing homes
23. Corresponds with insurers, employers, government agencies, and other health care providers about established clients as necessary
24. Manages care of clients; develops plan of treatment and/or follow-up and monitors progress, determines when referral to another provider is necessary, makes necessary arrangements for further care, determines when hospital admission or emergency room visit is necessary, and determines when illness is resolved

25. Assesses social/economic factors for each client, and tailors care to those factors
26. Manages care of clients in a way that balances quality and cost
27. Tracks outcome of interventions and alters interventions to achieve optimum results
28. Obtains informed consent from clients as appropriate and necessary
29. Maintains familiarity with community resources and connects clients with appropriate resources
30. Contracts with clients regarding provider responsibilities and client responsibilities
31. Supervises and teaches registered nurses (RNs) and nonlicensed health care workers
32. Participates in community programs and health fairs, school programs, and workplace programs
33. Represents the practice or the profession as an NP before local and state governing bodies, agencies, and private businesses as needed

PREPARATION AND LICENSE REQUIREMENTS

All NPs are RNs with education beyond the basic requirements for RN licensure. Many NPs have master's degrees, and some have doctorates. Master's degrees for NPs are required by law in 24 states. Three additional states will require a master's degree as of 2008. NPs without master's degrees have completed a program that meets requirements of state law.

State-required qualifications vary widely. For example, in Alaska, NPs must have completed a one-year academic course, have an RN license, be certified by a national certifying agency, and have 30 hours of continuing education every 2 years. In Pennsylvania, NPs must have an RN license, a master's degree, certification by a national organization, must provide evidence of continuing competence in medical diagnosis and therapeutics, and must have 30 hours of continuing education per year and 45 hours of advanced pharmacology. Federal law defers to state law regarding NP qualifications (42 C.F.T. 440.116).

In 35 states, NPs are required by state law to take and pass a national certification exam. A state requirement that an NP be nationally certified leads to a requirement of master's education because the certifying agencies of adult and pediatric NPs—the American Nurses Credentialling Center, the American Academy of Nurse Practitioners, and the National Certification Board of Pediatric Nurse Practitioners and Nurses—require a master's degree to sit for the certification examination. The National Certification Corporation, which certifies OB-GYN and neonatal nurse practitioners, does not require master's degrees, but will require master's degrees by 2007.

INITIALS

Among the initials used to designate NPs are CRNP (certified registered nurse practitioner); CANP (certified advanced nurse practitioner); ANP-C (advanced nurse practitioner–certified); CPNP (certified pediatric nurse practitioner); CANP (certified adult nurse practitioner); CGNP (certified geriatric nurse practitioner); RN, CS (registered nurse, certified specialist); ARNP (advanced registered nurse practitioner); and APRN (advanced practice registered nurse).

AREAS OF PRACTICE

NPs may be certified in the following areas:

- Adult primary care
- Family primary care
- Geriatric primary care
- Neonatal care
- Obstetrics and gynecology
- Pediatric primary care
- Acute care
- Primary care of school-aged children
- Family planning
- Emergency health care
- Maternal child health
- Mental health/psychiatric care
- Critical care
- Oncology
- Rehabilitation
- Community health
- Occupational health

Not all categories are recognized in all states.

LEGAL HISTORY OF NPS

Before the emergence of advanced practice nurses, the legal scope of practice of nurses excluded diagnosis and treatment of medical problems. Nurses carried out physicians' orders. In the mid-1970s, some state nurse practice acts were amended to include "nursing diagnoses" in the scope of nursing practice. A nursing diagnosis "limits the diagnostic process to those diagnoses that represent human responses to actual or potential health problems that are within the legal scope of nursing practice."[4]

When a physician shortage arose in the 1960s, it became evident that the shortage and the limitations on nurses' making medical diagnoses were limiting access to health care for people in medically underserved areas. Certain nurses and physicians joined forces to solve the problem. One answer was the NP.

The first NP educational program was a joint effort between Henry K. Silver, a pediatrician, and Loretta C. Ford, a nursing professor, at the University of Colorado in 1965. Their project was one of many efforts to deal with a physician shortage. The first NPs began practicing in the late 1960s.

As the concept was envisioned, NPs would make not only nursing diagnoses but also medical diagnoses. Further, they would treat patients with medical therapeutics, ordering pharmacotherapeutics and other treatments. It became necessary to broaden the legal scope of nursing practice.

As soon as NPs began to emerge from the training programs, a body of law emerged governing NP licensure and scope of practice. Idaho was the first state to revise its regulations to allow diagnosis and treatment by nurses.

By the mid-1970s, state legislators began to consider proposed laws regarding prescriptive authority for NPs. In some states, the prescriptive authority was granted through the regulatory process; in others, it was granted through the legislative process. By 2003, NPs had achieved some degree of prescriptive privileges in 49 states and the District of Columbia. The main legal goal of NPs for 30 years was achieved. The next legal hurdle became evident with the enrollment of a large percentage of the population into managed-care plans. NPs now need the legal authority to handle the primary care of panels of managed-care patients. In some states, NPs have that legal authority. In others, the law is unclear or does not address the issue.

DEMOGRAPHICS

There are approximately 103,000 NPs in the United States, according to statistics kept by Health Resources Services Administration (2001), as reported on the Web site of the American College of Nurse Practitioners.[2]

NPS IN PRIMARY CARE

The concept of the NP emerged from a need for more primary care providers in underserved areas of the nation. While some NPs work in specialty and acute care settings, the majority provide primary care.

As more and more health plans designate certain generalist physicians—pediatricians, internists, and family practitioners—as primary care providers (PCPs) for groups of patients, it is important for NPs to be included in the definition of PCP.

Definition of Primary Care

The following are definitions of primary care.

According to a national health policy think tank, the National Academy of Sciences' Institute of Medicine,

- "Primary care is the provision of integrated, accessible health care services by clinicians who are accountable for addressing a large majority of personal